SOUND FISHERIES MANAGEMENT

CONTRIBUTING TO A STRONG CANADA AND A VIBRANT NEWFOUNDLAND AND LABRADOR

FFAW | UNIFOR
Fish, Food & Allied Workers

Submission to the External Review Panel on
the Last-In, First-Out Policy for the Northern Shrimp Fishery
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"The Independent Panel on Access Criteria downplays the principles of adjacency and history as if they were something dreamed up in Newfoundland. These ideas actually are principles of the Food and Agriculture Organization of the United Nations. They are used worldwide to allocate resources. They are not something dreamed up in Newfoundland, as I said. These were the principles that Canada declared a 200-mile limit on in 1977. At that time Canada acted to conserve the resources for the people in coastal communities adjacent to and historically dependent on these resources. Instead, the allocation of resources are now dominated by lobby groups and political factors. I think that must change."

Mr. Glen Blackwood, Director, Centre for Sustainable Aquatic Resources, Marine Institute of Memorial University of Newfoundland, to the Standing Committee on Fisheries and Oceans, 37 Parliament, May 7, 2003. (Tab 1 – page 35)

INTRODUCTION

The Last-In, First-Out (LIFO) policy that the Department of Fisheries and Oceans Canada (DFO) uses to allocate the northern shrimp resource is threatening to quickly destroy the economies of large areas of rural Newfoundland and Labrador. In the space of a few years, LIFO, if maintained, will quickly undo almost 20 years of economic recovery and growth in rural NL.

As a policy, LIFO is defined by its purpose to tear down what other policies have encouraged to be built up. In many ways, LIFO is not a policy; it is a condition applied in support of a further policy - to protect the offshore sector.

Consider the facts of Figure 1. It is impossible for someone to look at the facts of this figure –

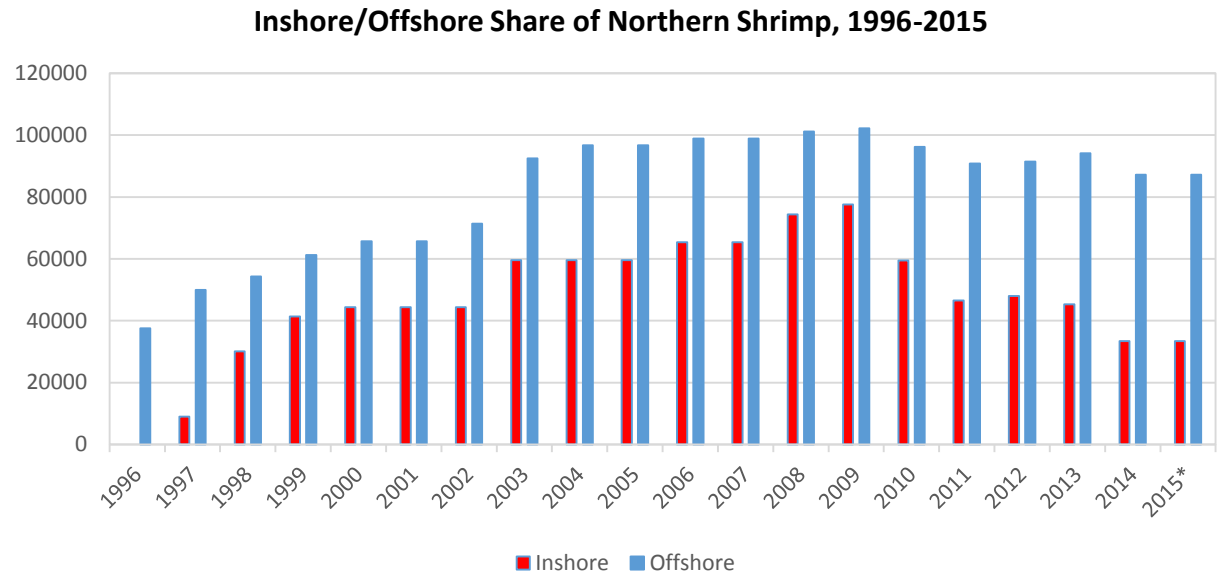


Figure 1

the drastic quota cuts to the inshore sector juxtaposed against the relatively stable offshore quota – and conclude that the inshore deserves further cuts and the offshore does not. Yet this is what the LIFO policy dictates. LIFO is a one-sided policy that favours the offshore.

LIFO also runs afoul of decades, centuries even, of fisheries policy committed to benefitting those who live next to the resource and traditionally depend upon it for subsistence and commercial purposes.

The principle of adjacency has been essential to the economics of the inshore fishery for centuries, even before the concept of adjacency as a fisheries management tool existed. The principle of adjacency in the fishery of Newfoundland and Labrador is indistinguishable from our history, our settlement pattern, our politics, our societal beliefs, and, most importantly, our economy, upon which all of these other factors rely.

When participation in the northern shrimp fishery was extended to the inshore fleet in 1997, it was on the basis of adjacency. “Those living closest to this stock will benefit from it,” then-

Minister of Fisheries and Oceans Fred Mifflin announced in an April 23, 1997 news release (Tab 2). “It is a great opportunity to take advantage of the available resource to create new jobs for inshore fishermen and onshore plant workers who are eager to be part of such a viable industry,” Minister Mifflin concluded.

The announcement of April 1997 marked the formal start of the inshore’s twenty-year participation in the northern shrimp fishery; a participation that is still ongoing. Overall, the inshore northern shrimp fishery has been a great success for the inshore fleet and local processing sector – thousands of jobs have been created, as has tens of millions of dollars in new wealth. Some regions who were hardest hit by the cod moratorium, such as the Northern Peninsula and Notre Dame Bay, have been revitalized. Out of the devastation of the moratorium, a stronger and wealthier rural economy has developed, primarily as a result of the northern shrimp fishery.

Newfoundland and Labrador has experienced the emergence of a rural middle class composed of shrimp harvesters that have disposable income and the capacity to invest. This is a development never before experienced in rural NL, and in some areas it is so impactful that the rural economy now drives the urban economy.

The growth of the rural economy around the northern shrimp fishery was not without significant investment and risk. The shrimp fishery is not cheap, both from a harvesting and processing perspective, and hundreds of millions of dollars have been invested, and continue to be invested, over the past twenty years. Up until very recently, there has been no doubt that this investment was worthwhile.

It is important to note that the inshore sector’s investment in the shrimp fishery was not without inducement from the federal government. In 1997 harvesters were required to “gear-up” to go shrimp fishing, a mandate that was very costly. In 2007 harvesters were granted permanent licenses and told by the federal government to grow their enterprises through self-rationalization, creating a market place for shrimp licenses and fueling a massive wave of harvester investment in the shrimp fishery in an attempt to remain viable.

It is the actions, expectations, investments, and plans of those involved in the inshore sector, all guided by policy decisions and encouragement from government, that makes the LIFO policy impossible to understand and implement. Outside of the processing companies, the inshore sector is composed of a few hundred small boat harvesters. These are owner-operators and individuals of modest means. They may own their own boat, but they have limited access to capital. Investing half a million dollars or more into an enterprise is the biggest financial undertaking they will make and it is one that is made with great prudence.

So why would the federal government encourage small boat investment in the shrimp fishery and the creation of a shrimp license marketplace if their intention was to apply a policy (LIFO) that would reduce the value of that investment and effort to zero? Why would the federal government not warn processors, harvesters, and local governments of the peril of investing in a shrimp fishery that was subject to LIFO?

These are the questions that have perplexed those in the inshore sector for the last eight years. For years, DFO pursued policies that would make the subsequent application of LIFO an utter tragedy for large parts of rural NL. When LIFO was first applied in 2010, it was not done so

against a blank slate. Instead, it was applied against a shrimp fishery that had developed into a pillar of the rural economy in NL.

LIFO is not a sensible policy for the federal government, hence the current review. It contradicts the socio-economic considerations that have existed traditionally in the allocation of fishing resources. LIFO is harsh, blunt and blind to the social and economic interests that exist in the inshore shrimp sector.

FFAW-Unifor has long argued against the LIFO policy. It has shown that the inshore shrimp fishery is essential for the economic sustainability of dozens of coastal communities. FFAW-Unifor has made this point clear on many occasions to the Minister of Fisheries and Oceans, to the Parliament's Standing Committee on Fisheries and Oceans, in editorials, in protests, and at many meetings of the Northern Shrimp Advisory Council.

During the 2015 federal election campaign, FFAW-Unifor wrote the future Prime Minister and asked:

> *Will a Justin Trudeau led Liberal Government commit to removing LIFO as a shrimp allocation policy and establishing a fair sharing regime for northern shrimp? (Tab 3)*

In the first annex of this letter, FFAW-Unifor included material on LIFO which stated the following:

> *The northern shrimp fishery, pursued by inshore harvesters in the traditional fishing grounds adjacent to Newfoundland and Labrador, is vital for the economic and social well-being of rural coastal communities in NL.*

The Liberal Party of Canada delivered the following response to the FFAW-Unifor's question on September 19, 2015:

> *We are committed to reviewing the last in, first out (LIFO) policy for northern shrimp. We believe difficult allocation decisions must be made with broad discussion and consultation with the industry in order to ensure the best possible decisions are reached* ***for the future of the resource, and the maximum benefit for the people and coastal communities who rely on the resource*** *(emphasis added). (Tab 4)*

To FFAW-Unifor, the Liberal Party's last statement – "*maximum benefit for the people and coastal communities who rely on the resource"* – is the crux of the matter with respect to resource allocation and the LIFO policy.

Resource allocation policies have to operate within the environment that exists. As a result, they must change or adapt as the ecological, economic, and social environments change. The LIFO policy is rigid, incapable of change and adaptation. LIFO lost its applicability as soon as investment was made by inshore shrimp harvesters and the shrimp fishery became entrenched into the economies of several rural regions in the province. Inshore licenses can be removed, but not the financial investments attached to those licenses and the inshore shrimp fishery.

The lack of flexibility in LIFO is why the policy is entirely inappropriate for resource allocation. Policies require a degree of nuance and the capacity to be inclusive and adapt to changing circumstances. LIFO is based entirely on a crude hierarchy of access and allocation, which is now being used to drive out those who are most in need of access to the resource. The blunt justification offered by LIFO for this removal is this: you were not first, therefore you must go.

The federal government cannot operate key fishery policies in that way, and such application contradicts DFO's mandate of sustainable co-management of fisheries resources.

The submission of FFAW-Unifor is structured to adhere to the three questions set forth by the Ministerial Advisory Panel during its pre-consultation meetings with key stakeholders.

Question 1:

Should LIFO be continued, modified, or abolished and why?

It is the position of FFAW-Unifor that LIFO should be abolished. We have been able to quantify many of the harms that the LIFO policy has imposed upon rural NL and we have set forth these in detail in this section.

Question 2:

What key considerations should inform any decision to continue, modify, or abolish LIFO?

It is the position of FFAW-Unifor that in abolishing LIFO, the key considerations are the economic impacts detailed in Question 1 and the principle of adjacency, which is a long-standing, fair, ecologically responsible and economically sound management consideration.

Question 3:

If LIFO were modified or abandoned, what are the elements of an access and allocation regime for the northern shrimp fishery?

It is the position of FFAW-Unifor that adjacency should be the primary guiding principle in northern shrimp allocation, after conservation and respect for First Nations treaty and land claim rights. As an allocation policy, adjacency is flexible enough to apply to the various shrimp fisheries along the eastern and northern coasts of Canada, while ensuring that those who live closest to the resource remain the primary beneficiaries of that resource.

Adjacency in Shrimp Fishing Area (SFA) 6 is what is best for the people and economy of Newfoundland and Labrador both today and in the future. The management of different species of fish cannot be fully divorced from one another and management plans should help build for a strong future while accounting for the specific issues of today.

This submission should be read as further evidence supporting the presentations FFAW-Unifor has advanced during the consultations. Upon this submission hinges over three thousand jobs. We ask the individual members of the Panel to consider this fact when reviewing this submission and making your recommendations.

Section 1: Should LIFO be continued, modified, or abolished and why?

LIFO should be abolished. There are many reasons for holding this position and each will be discussed in this section. But, in general, FFAW-Unifor submits that LIFO is completely divorced from the inshore shrimp fishery as it developed over the last 20 years and as it currently exists. LIFO will create economic chaos in many areas of rural NL. Such a policy should never be advanced by the federal government.

Overview of Rural NL – Pre-Northern Shrimp Fishery

The connection of this province to the fishery is beyond dispute. The fishery has guided the development of our province in both positive and heart wrenching ways. The breadth of that history does not require further analysis in this process.

What is very important is that we understand the context of the fishery and fishing communities in the years just after the moratorium and just before the inshore's entry into the shrimp fishery. The inshore northern shrimp sector did not develop at a time when coastal communities and fish harvesters and plant workers were at their strongest. Rather, the inshore sector gained entry to northern shrimp when rural NL was on the verge of collapse.

This section will briefly detail some of the enormous difficulties faced by harvesters, plant workers, and communities in the five years between 1992 and 1997. The inshore northern shrimp sector did not develop from a position of strength but from a position of necessity. It is not hyperbole to state that many of the communities that exist in the economic zones discussed below would not exist today in any meaningful way without the inshore shrimp fishery.

The power imbalance between a desperate rural NL and its inshore fleet and a strong offshore sector needs to be kept in mind when weighing the importance and practicality of the commitments that DFO made in 1997 to both the inshore and offshore fleets.

This section of the submission will assess five distinct economic zones as they are delineated by the Community Accounts web service that is operated by the Newfoundland and Labrador Statistics Agency. The economic zones relate to the regional economic development board (REDBs) boundaries established by the provincial government in the 1990s. While the REDB's no longer exist, the Newfoundland and Labrador Statistics Agency continues to use the REDB economic zones as a filter for regional economic assessments.

Please note that the impact of the northern shrimp fishery extends beyond the economic zones discussed below. The specific economic zones described in this section represent area where the northern shrimp fishery is most concentrated and has had the largest effect. This fact was reflected in the work of the MAP. It held consultations or conducted site visits in each of the zones described herein.

Newfoundland Zones

Economic Zone 6

Zone 6 covers from the top of the Northern Peninsula to just below Anchor Point on the west side and to Englee on the east side. The major centre in this zone is St. Anthony. There are currently two shrimp plants in this zone – Anchor Point and St. Anthony – and scores of shrimp harvesters.

The cod moratorium came into effect over two years in zone 6. In 1992, the 2J3KL moratorium was announced, which affected the fishery in the northeast Atlantic, and in 1993 the cod moratorium was announced in 4R, which closed the cod fishery in the Gulf.

In 1992, the median income in zone 6 was $13,700. In 1997, with the moratoria in effect in the Atlantic and the Gulf, the median income had dipped slightly to $13,600. Over the six year period of 1992 to 1997, there was no growth in the median income. With inflation factored in, the median income in 1997 was $1,073 less (7.9%) than the median income of 1992.

On a provincial scale, the 1992 median income in zone 6 was 99.3% of the provincial median income of $13,800. Nationally, the median income in zone 6 was 73.7% of the Canadian median income in 1992. By the end of 1997, the median income in zone 6 had dropped to 95.8% of the provincial median income and 70.1% of the national median income.

This economic stagnation was reflected in the high numbers of people in the region receiving benefits from the Northern Cod Adjustment Recovery Program (NCARP) and The Atlantic Groundfish Strategy (TAGS). Between 1992 and 1997 an average of 2,210 people in the region relied upon NCARP and TAGS on an annual basis. Over this period, almost 32% of the working age population (ages 20 to 65) were receiving assistance related to the moratorium.

As is expected, these severe economic challenges precipitated a large wave of outmigration. In 1991, there were 12,880 residents in zone 6; by 2001 the population had declined by 22% to 10,075. The younger population was a large part of this outmigration. Over the same ten year period, the number of people between the ages of 20 and 44 declined by 18%.

Economic Zone 7

Zone 7 starts at the bottom of Gros Morne National Park, close to the town of Trout River and extends north to Black Duck Cove. There are currently two shrimp plants in the area – Port-au-Choix and Black Duck Cove – as well as scores of shrimp harvesters.

Like Zone 6, the cod moratorium hit the region over a two year period – 1992-1993. In 1992, the median income in the zone was $13,800, which was exactly the same as the median income for the province and 74.2% of the median income for the country. By 1997, the median income in zone 7 had declined by 6.5% to 12,900. Provincially, the zone 7 income was now 90.8% of the provincial median income and just 66.5% of the Canadian median income.

As in zone 7, these economic struggles could be correlated to the large number of people in the region receiving benefits from NCARP and TAGS. Between 1994 and 1997, an average of 1,321 residents of the region received TAGS benefits, which was approximately 21% of the population of the zone between the ages of 20 and 59.

The cod moratorium also spurred outmigration in zone 7. In 1991, the population of the zone was 11,955 and by 2001 this was reduced to 9820, a decline of 17.8%. The younger working population made up a large part of this outmigration. Between 1991 and 2001, the number of residents in zone 7 between the ages of 20 and 44 dropped by 32%.

The Community Accounts economic and demographic information for zones 6 and 7 are reflected in the work of Craig Palmer and Peter Sinclair on thoughts of outmigration among high school students on the Northern Peninsula. The two authors conducted a survey of high school students in the area in December 1998. Among the students with a high interest in the fishery – 60% of the boys and 41.2% of the girls – less than 20% stated that they expected to be able to stay on the northern peninsula. In the conclusion, the authors note that efforts to rebuild local resources cannot be dismissed, as "without which hardly anyone would be able to remain." (Tab 5)

Economic Zone 14

Zone 14 is one the most fishing dependent areas in the province. In the east the zone begins at the eastern point of Terra Nova National Park and its most westerly point is in the town of Lewisporte. The zone takes in all of Bonavista North and a large portion of Notre Dame Bay, including the fishery-centric areas of Fogo Island, Twillingate, and New World Island. The town of Gander is the largest center in the region. Though it is not directly engaged in the fishing sector, it is the primary service centre for the more than fifty fishing communities in the region.

There are two shrimp plants in the zone, one on Fogo Island in the community of Seldom-Little Seldom and one in the town of Twillingate. There are hundreds of shrimp harvesters located along the coast of Bonavista North and Notre Dame Bay.

In 1992 the median income of the zone was $13,200. At this time, the zone's median income was 95.5% of the provincial median income and 70.9% of the Canadian median income. In 1997, the economic impact of the moratorium was fully entrenched in zone 14. The median income that year was $12,900, a 2.3% decline. When inflation is factored in the 1997 median income in the region was 9.4% worse than the 1992 income level.

On a provincial scale, the zone's 1997 median income was now just 90.8% of the province's median income. Nationally, the zone's income was had decreased to 66% of the Canadian median income.

As in zones 6 and 7, these financial difficulties could be traced to declines in the fishery and a heavy dependence on NCARP and TAGS. As a percentage of the zone's population, the number of NCARP and TAGS recipients was quite low, but this is primarily the result of Gander being included in the region. In terms of absolute numbers, TAGS and NCARP beneficiaries in zone 14 outnumbered those in zones 6 and 7. Between 1992 and 1997, an average of 3,472 residents in zone 14 depended on NCARP or TAGS.

In this economic decline, zone 14 experienced one of the largest population declines in the province. In 1991 the population of the zone was 57,020. By 2001, this had declined to 48,595, a drop of 8,425 residents. This amounted to a 15% reduction.

As expected, the population declines was most acute for the young workers of the region. In 1991, there were 22,040 residents between the ages of 20 and 44. In 2001, the number of residents in the same age category had declined to 16,320, a drop of 26%.

Economic Zone 17

Zone 17 covers the entire Conception Bay North area of the Avalon Peninsula. On the south end it starts at the turn off to the Veteran's Memorial Highway and it extends to the tip of the Avalon Peninsula at the community of Grates Cove. There are two primary centers in the region, Bay Roberts and Carbonear, and both have strong connections to the fishery. Overall, the zone is heavily connected with the shrimp fishery. There are hundreds of shrimp harvesters located along the coast of zone 17. Until very recently, there were two active shrimp plants in the area, one in Old Perlican and the other in Bay de Verde. The Bay de Verde plant was recently destroyed in a fire and its future is still not settled.

Zone 17 has long been amongst the most financially challenged areas of the province and it was hit hard by the decline of cod stocks and the moratorium. In 1992, the median income in the area was already in decline. At $11,900, it was only 86% of the NL median income and just 63.9% of the Canadian median income.

Given the size of the population, the usage rates of TAGS or NCARP is not very high. In absolute numbers, however, the number of zone 17 recipients of these benefits is similar to zone 14. Between 1991 and 1997, an average of 3,270 residents of zone 17 were receiving NCARP or TAGS benefits.

The population decline in zone 17 was notable, though it was not hit not as hard as other zones. In 1991 the total population for the zone was 45,075; in 2001 it had dropped to 40,940, a 9.2% decrease. As with other zones, the population decline was more prevalent among the younger population between the ages of 20 to 44. Between 1991 and 2001, the population within this age bracket plummeted by 19.4%. Of the total decline in the zone of 4,135, a staggering 79% were from the 20 to 44 age bracket.

Labrador Zones

Economic Zone 4

The largest zone with a connection to the inshore northern shrimp fishery is zone 4. This zone begins at the south east tip of Labrador close to the community of Henley Harbour and continues north just past Cartwright. This is a large area, with almost the entire population living along the coast – Mary's Harbour, Port Hope Simpson, and Cartwright. The zone has an inshore shrimp processing plant in Charlottetown and there are dozens of shrimp harvesters along the coast, primarily operating from Mary's Harbour and Cartwright.

Like some zones on the island, zone 4 already faced economic challenges in 1992 when the moratorium was announced. Median income in the zone was $11,900, which was just 86.2% of the provincial average and 64% of the national average. The moratorium was very hard on the region. Though the 1997 median income had increased by 5% over 1992 levels, the increase failed to keep pace with inflation.

The dependence of the zone on the fishery is clear from the high percent of residents in this zone that received NCARP or TAGS benefits. The population of this zone is relatively small and therefore the absolute number of NCARP and TAGS recipients is not high. But as a percent of

the total working age population, it is very significant. Between 1992 and 1997, an average of 22.7% of the total population of the region received NCARP or TAGS benefits.

Population decline was also an issue for zone 4, though in absolute numbers the decrease does not appear serious. In 1991 there were 2,955 residents of zone 4 and by 2001 this had decreased to 2,720. This drop of 235 people nonetheless represented an 8% decrease in population. Not surprisingly, much of this decline was concentrated in the younger age brackets. Between 1991 and 2001, the number of residents aged 20 to 44 declined by 170, which is 72.3% of the total population decline during the same period.

A Crisis in Municipal Government

Municipalities play an important though often overlooked role in rural NL. They manage a variety of services within the town, such as firefighting, garbage collection, and street lighting. Of critical importance to the fishing sector are the water lines and roads that municipal governments construct and maintain.

The primary sources of municipal revenue is property taxes levied against both commercial and residential properties. A key part of the property tax is the value of the property being taxed. Thus, property taxes are sensitive to the local property market – declines in property values or the closure of commercial properties will have a detrimental effect on municipal revenue.

Unlike the immediate impact felt by fish harvesters and plant workers, the moratorium's impact on municipal governments developed a little slower. Property assessments for all municipalities except St. John's only occur every three years. Therefore, the first post-moratorium assessment occurred in 1994. We do not have the data from that assessment, but given later events it is likely that property values and commercial tax revenue in rural NL decreased sharply by 1994. These decreases, combined with increasing outmigration and difficulties in tax collection due to outmigration or the inability of residents to pay, placed many municipalities in a dire financial predicament.

It is also important to note that the vast majority of the 290 municipalities that existed in the mid-1990s were small, with less than a thousand residents. Towns were not large operations (are still not today) with the capacity to adapt in the face of an economic crisis. Moreover, towns were legislatively restrained from engaging in economic development until 1999. As a result, they remained the passive victims of the decline of rural NL.

By 1997, much of the municipal sector had become financially untenable. In March 1997 the provincial government was required to initiate a debt relief program for municipalities. At the time it was declared that approximately 150 of the 290 municipalities had debt service ratios above 30% and many were above 50%. To put this in perspective, a town with a debt service ratio of 40% was paying 40 cents of every tax dollar to service debt (Tab 6). This is unsustainable.

The provincial debt relief program was NCARP and TAGS for municipalities. Over the course of the program, 185 municipalities (64% of all towns), most of which were coastal fishing

communities, required assistance from the debt relief program. The program cost the province $54.2 million.

Inequality of Bargaining Position as it Relates to the Inshore Sector's Entrance into the Northern Shrimp Fishery and the Establishment of LIFO

It was this environment of near social, economic, and municipal collapse that prevailed when the inshore fleet gained access to northern shrimp fishery. Clearly those in the inshore sector, municipal government, and even the provincial government were not being granted entry into the shrimp fishery from a position of strength.

Instead, the inshore gained access from a position of desperation; of knowing that if the inshore could not fish shrimp, there was going to be no further support programs or industries to save them. The importance of the shrimp fishery to a post-moratorium NL was succinctly put by former FFAW-Unifor President Earle McCurdy who spoke before the Standing Committee on Fisheries and Oceans in October 2001. At that time, Mr. McCurdy stated (Tab 7):

> *"In most cases those [shrimp] plants are in communities that were devastated by the collapse of the northern cod stock in particular and of groundfish stocks generally in Atlantic Canada. For example, the plant in Port Union, on the northeast coast of Newfoundland, was the largest fish plant in the province. Prior to 1992 it had a workforce in the vicinity of a thousand, which is very large by our standards…There hadn't been a day's production in that plant from 1992 until it finally opened its doors for shrimp, in late 1999, as I recall.*
>
> *Similarly, the St. Anthony plant, on the tip of the northern peninsula, once had 600 people working in a groundfish operation. It too had been closed for several years, and about three of four years ago it opened its doors for shrimp, with again in the vicinity of 150 employees – in both case 150 to 175 employees, a far cry from what they had, but a darned sight better than zero."*

The point stressed by Mr. McCurdy about plant workers is very important. In the mid-1990s, harvesters were working hard to diversify, and the northern shrimp fishery was an essential part of rebuilding a viable inshore sector. Plant workers have no flexibility – without product to process, they do not work.

Prior to deciding that the inshore fleet was to be given access to the northern shrimp fishery, DFO requested submissions from stakeholders and interested parties in late 1996 and early 1997. In April 1997, DFO released a backgrounder entitled "Adjacency" where it states that nearly 160 submissions were received and that 90% recommended adjacency.

On April 23, 1997, DFO announced that the total allowable catch (TAC) for northern shrimp had increased by 57%, "a move that will bring jobs and millions of dollars to fishing communities." In the release that accompanied the announcement, then-Minister of Fisheries and Oceans, Fred Mifflin, was quoted as saying, "It is a great opportunity to take advantage of the available resource to create new jobs for inshore fishermen and onshore plant workers who are eager to be part of such a viable industry." Later in the same release the Minister was again quoted as saying:

> *"In regard to the allocation of increases in Shrimp Fishing Areas 5 and 6, which are situated off the shores of Labrador and Newfoundland, I have been guided by the long-standing principle of adjacency. Those living closest to this stock will benefit from it." (*Tab 2*)*

In the backgrounder on adjacency that was released with the announcement of the inshore entrance to the shrimp fishery, DFO were even more bullish on adjacency. The backgrounder begins by noting, "Certain fundamental principles underlie the sharing of the increase in the 1997 northern shrimp Total Allowable Catch. One of the most important is adjacency." The backgrounder then makes this key statement:

> *"Put simply, adjacency is the principle that those who reside next to the resource or have traditionally fished in those waters should have priority access to it. This principle is used throughout the Canadian fisheries and is recognized internationally." (Tab 8)*

The backgrounder then asks, "How will adjacency work in the 1997 northern shrimp fishery?" The rest of the backgrounder then details the amount of shrimp now available to inshore harvesters.

Taken at face value, Minister Mifflin's announcement appeared to be the best news that the inshore sector and rural NL had heard in a long time. This good news simply masked the conditions that accompanied the inshore's entrance exposed the incredible power imbalance that existed in favour of the offshore in the northern shrimp fishery.

The allocation policies for fish resource is an odd topic because the Minister retains ultimate discretion regardless of policy. Therefore, in theory, the Minister possesses significant authority in allocation policy. In practice, however, there is a good deal of informal negotiating and formal lobbying on quotas between the interested stakeholders and between stakeholders and DFO.

Between 1977 and 1996, the dominant stakeholder in the northern shrimp fishery was the offshore fleet. At the time, only an offshore vessel could catch northern shrimp. When consideration was being given to opening the northern shrimp fleet to the inshore, the offshore lobby was strongly against the idea. Given the conditions set forth by DFO for the inshore's entrance into the shrimp fishery, it appears that the offshore fleet wielded whatever influence it could over DFO to ensure its overall superior position in the northern shrimp fishery.

This influence is clearly evident from statements within the integrated fisheries management plans (IFMP) of the time. The 1997-1999 northern shrimp IFMP, which was the first to cover the inshore fleet, contained this enlightening statement about the influence of the offshore shrimp lobby within DFO (Tab 2):

> *"The Executive Director of CAPP [Canadian Association of Prawn Producers] deals with DFO on day-to-day issues. The offshore industry is self-managed to a large degree with CAPP administering their Enterprise Allocation (EA) program and Flemish Cap days-on-ground."*

The remainder of that same IFMP clearly illustrates a DFO preference for the offshore sector:

- Under "Fleet Structure and Operation" the entire section is devoted to discussing the make-up of the offshore fleet, pointing out immediately that it is purpose built for shrimp trawling and processing. There is no statement on what the inshore fleet would look like.

- In the “Employment” section, the focus is entirely on the offshore, pointing out the number of employees of the offshore fleet. Curiously, there was no section on employment or the number of offshore employees in any previous IFMP. The “Employment” section in the 1997 IFMP did not mention possible inshore employment.

- There was a section entitled “Contribution to Northern Development” – again, a similar section was not in any previous IFMP – which extolled the virtues of the offshore’s contribution in the northern area. There was no similar section pointing out the importance of the inshore to rural NL.

- There was a further section – again, it had never appeared before in an IFMP – entitled “Indirect Effects”, which detailed the indirect benefits of the offshore fleet to Atlantic Canada. Most of this section mimics word-for-word the current CAPP commercials running on television.

- To build upon this offshore praise and focus, the IFMP even included a note that CAPP had won an environmental award for its voluntary use of grates that minimized groundfish bycatch.

In general, the lack of notice given to the inshore fleet in its first shrimp IFMP was dismissive and thus humiliating. There was no mention of the difficult economic and social circumstances affecting those in the inshore sector or the support the inshore’s entrance was going to provide for hundreds – eventually thousands – of people in rural NL. A logical assumption is that DFO would want to trumpet in the IFMP the economic development that its policies would now facilitate in rural NL; clearly the indirect economic effects of the offshore fleet were more important.

The only noticeable mention of the inshore fleet in the entire 1997-1999 IFMP is to put forth the contradictory and harsh terms under which the inshore’s entrance was to be regulated. On page 19 of the 1997-1999 IFMP the sharing principles of the expanded northern shrimp fishery are set forth. Immediately before listing the principles, the IFMP discusses the consultations that gave rise to these principles, noting that 160 submissions were received. The IFMP neglects to say that 90% of the submissions favoured adjacency. If it did state the statistic, the second and third sharing principles would be completely unjustifiable (Tab 2). These principles were:

- The viability of existing enterprises will not be jeopardized.
- A threshold of 37,600 tonnes is established as the level of quota to ensure the continued viability of the 17 offshore license holders.

These two principles were listed ahead of aboriginal access and adjacency. In a further section of the IFMP, in confusing language, the documents suggests that the threshold would apply to individual shrimp fishing areas. This was not clearly explained at the time.

The two pro-offshore conditions set out in the IFMP were the maximum demands of the offshore sector for agreeing to open access to the offshore. The first condition – not jeopardizing viability – established in perpetuity that the northern shrimp fishery was first and foremost an offshore fishery. How the northern shrimp fishery would benefit adjacent communities and harvesters and maximize employment and local economic development were distant third or fourth concerns in the context of this offshore-protecting condition.

The second condition – setting a 37,600 tonne threshold for viability – was without precedent. This threshold had been the TAC the year before and had never previously been identified as a viability threshold level for the offshore fleet. In fact, it *could not* have been a viability threshold as it had not existed long enough to attain such standing.

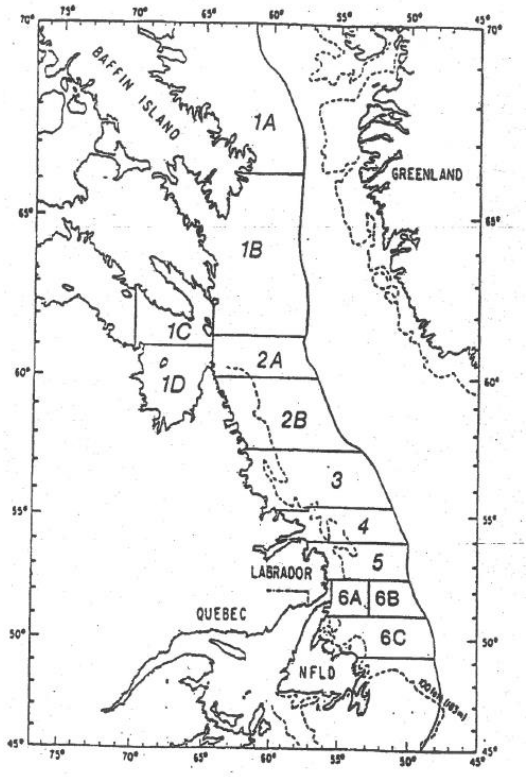


Figure 2

The most upsetting aspect of this pro-offshore condition is that the offshore fleet *had never before landed 37,600 tonnes of northern shrimp.* The most it had ever landed was just over 30,000 tons. The offshore lobby had convinced DFO that a threshold above what it had ever caught was needed for viability. This made no sense.

Also defying logic was the division of this threshold into specific SFAs. In 1990-1991, most of SFA 6, specifically those areas listed as 6B and 6C in Figure 2 were considered exploratory fisheries. As late as 1992, the TAC for the area was only 6,600 tonnes. The current threshold of 11,050 tonnes only emerged in 1994 and from 1994 to 1996 it was never caught by the offshore fleet. The offshore fleet again had set a threshold for viability that it had never achieved.

Given the weakness of the inshore's position – it was seeking an economic lifeline – inshore representatives were in no position to vehemently challenge these conditions. It has been repeated on many occasions by the offshore lobby that the inshore agreed to these conditions. That is a misinterpretation. The inshore never agreed to the conditions, but it was in the humiliating position of asking to fish in its traditional waters in a time of economic devastation. To paraphrase Mr. McCurdy's statement from above, a few hundred new inshore jobs is "a darned sight better than zero."

It is difficult to fully appreciate the desperate position of the inshore fleet at the time it was engaged with DFO to enter the shrimp fishery. Some of this desperation was described by David Decker in 1995 to the Standing Committee on Fisheries and Oceans. Mr. Decker, the current Secretary-Treasurer of FFAW-Unifor and the staff representative for the west coast of

NL in 1995, described how harvesters, as part of the TAGS program, were forced into taking courses of no relevance or use. One of the mandatory course was ironically entitled “Choices”, while others were called “Improving Your Odds” and “Life Skills.” According to Mr. Decker, this was a “humiliating experience” that was essential for maintaining support.

For many harvesters, the entire purpose of TAGS was to move people away from the fishery and out of rural NL. Mr. Decker gave voice to these concerns when stating:

> *“It seems to me, that before they’ll be satisfied, somebody wants a mass exodus to move out of those communities. They want to see people with their suitcases and lines walking down the road.” (Tab 9)*

To combat this ongoing collapse, access to the shrimp fishery for the inshore, under any conditions, was necessary.

In English Common Law there is a legal concept known as the unequal bargaining doctrine. The doctrine was first enunciated by Lord Denning, one of the most important figures in English jurisprudence, in 1974 and has been subsequently applied many times in Canada. The definition of the doctrine is best described by Denning himself (Tab 10):

> *By virtue of it, the English law gives relief to one who, without independent advice, enters into a contract on terms which are very unfair…when his bargaining power is grievously impaired by reason of his own needs or desires, or by his own ignorance or infirmity, coupled with undue influence or pressures brought to bear on him by or for the benefit of the other. When I use the word ‘undue’ I do not mean to suggest that the principle depends on proof of any wrongdoing. The one who stipulates for an unfair advantage may be moved solely by his own self-interest unconscious of the distress he is bringing to the other.*

Part of the unequal bargain doctrine was clarified in the 2010 Supreme Court of Canada case *Tercon Contractors v. British Columbia.* Writing for the majority, Justice Binnie confirmed that a case of unequal bargaining power existed at the time the contract was formed.

In general, unequal bargaining power has been applied to contracts that have a take-it or leave-it approach. That was essentially the nature of how the inshore were granted access to the northern shrimp fishery. What negotiating power did they have to counter the offshore’s terms? Not fish? Find another way to gain access?

FFAW-Unifor is cognizant that an IFMP would not be construed as a contract and that ministerial discretion prevails. With that said, the IFMP is structured like a contract, particularly with respect to its setting of principles, which carry with them an air of authority. We also note that while the Minister’s discretion is paramount, it is preferable for the Minister’s decision to be defendable and not subject to accusation of unequal bargaining authority between various stakeholders.

LIFO Protects an Invented Interpretation of the Offshore

In the 2007 Northern Shrimp Integrated Fisheries Management Plan (IFMP) under the “Benefits to Stakeholders” section it states that the IFMP is to “promote the continued development of a

commercially viable fishery with particular emphasis on the needs of the traditional license holders." (Tab 11)

The notion that the offshore is "traditional" has long been a point of contention for the inshore sector and both a source of pride and a defense mechanism for the offshore. The term "traditional" is not defined in the IFMP but it conjures an image of permanence and a long period of time. All statements or advertisements by the offshore lobby stress that they are the "traditional offshore fleet." The term traditional is an honorific that the offshore think is very important to support their claim as the essential fleet to the northern shrimp fishery.

The idea of tradition has been the source of intense scholarly study for the past forty years, particularly the study of how traditions develop and what purpose they serve. The late Eric Hobsbawm studied the invention of tradition in a book aptly titled, "The Invention of Tradition," which is one of the most important academic works of the past 50 years and has spawned entire areas of study.

According to Hobsbawm's study, the beginning of most traditions can be traced to a brief and dateable period – a matter of a few years, perhaps – and are then formally established with great rapidity. Through the lens of traditions being invented, scholars have analyzed the invented nature of the Highland tradition in Scotland and the invention of the idea of chiefs within tribal units in Africa.

To Hobsbawm, invented traditions "are a set of practices, normally governed by overtly or tacitly accepted rules and of a ritual or symbolic nature, which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past." Those inventing a tradition try to establish links with a suitable historic past but their "connection with this past is tenuous at best."

The offshore as the traditional fleet is an invention. A review of IFMPs back to 1990 shows that the offshore was not referred to as traditional prior to the entrance of the inshore fleet in 1997. The IFMPs for 1990, 1991-1993, and 1994-1996 are very practical and business-like, focusing on the operations and management of the northern shrimp fishery. Then in 1997 the offshore fleet suddenly became traditional and the champion of northern economic development.

In fairness to the offshore, prior to 1997 it did not have another fleet against which it had to differentiate itself. With that said, the decision to promote itself as traditional was done consciously with a full understanding of the connotations that are carried with such a term.

The use of the term "traditional" is a clear attempt to connect itself with First Nation interests. Though Indigenous groups have traditional interests that are recognized in law and society (Tab 12) offfshore trawling for shrimp in large factory-freezer vessels with onboard processing capacity is not a traditional practice.

Connecting the offshore fleet to "traditional," as it is used by Indigenous groups, is difficult to accept because there is no distinction between Indigenous and non-Indigenous groups in the use the word. Indigenous groups have traditional rights; Clearwater and OCI do not. This is an improper use of the term "traditional".

In addition to being a clear invention and misapplied, the word "traditional" in reference to the offshore is also without substance. Returning to Hobsbawm's description of why traditions are invented, he references a desire to show continuity with the past despite the fact that this

connection may only be tenuous. For much of the northern shrimp fishery, but particularly in SFA 6, the offshore's connection to the past is quite weak.

In 1990, DFO's Economic Analysis Division published an economic assessment of the northern shrimp fishery. The assessment describes an offshore shrimp fishery that was heavily dependent on foreign vessels through the late 1980s. The report shows an offshore fleet more concerned with making profits from using foreign vessels than northern development.

According to the DFO report, many offshore vessel operators found it uneconomic to fish shrimp without also having a groundfish license. As a result, license holders were permitted, on a year-to-year basis, "to charter foreign flag vessels to fish the Canadian allocations, normally with a range of operating restrictions. The foreign flag vessels paid the licensee a royalty, generally in the range of 11 percent of the catch value." (Tab 13) Thus the predominant tradition for the offshore sector ten years into the northern shrimp fishery was to have foreign vessels catch the resource.

The strong foreign influence in the northern shrimp fishery continued at least into 1990, particularly with respect to exploratory fisheries. It was not until the late 1980s that an exploratory fishery was carried out in SFA 6. This fishery, which was confined to area 6A (St. Anthony Basin) was likely prosecuted by foreign vessels. In 1988, 65% of all exploratory fishery landings were made by foreign vessels and in 1989 this percent decreased slightly to 62%. This is not the basis of a "traditional" offshore fishery.

With respect to the areas adjacent to NL, the offshore's history in those areas is so short that it fails all reasonable interpretations of traditional. In the Hawke Channel, which is currently most of SFA 5 and is adjacent to Labrador, the offshore's presence can at best be traced to 1986. For area 6A, a formal offshore tabshrimp fishery subject to enterprise allocation provisions did not begin until 1990, a mere seven years before the inshore's entrance.

The largest parts of SFA 6, areas 6B and 6C, were only opened to exploratory fishing in 1989-1990 and a formal fishery did not begin until 1991. The entire SFA 6 quota that year was 3600 tonnes. Between 1991 and 1997 it appears that the offshore chose to define traditional as the primary beneficiaries of quota increases.

The characterization of the offshore as traditional is strongly related to LIFO because the term traditional is used to give justification to using LIFO to formally give an advantage to the offshore. The use of the word traditional is usually applied in IFMPs in sections that speak of special treatment for the offshore. For example, in the Quota Sharing Arrangements section of the 2007 IFMP which discusses the application of LIFO it states, "To ensure that the viability of the traditional offshore fleet was not jeopardized." (Tab 11)

The use of the "traditional" in that sentence deserves further consideration. In that sentence, "traditional" is used to enhance the standing of the offshore fleet, thus justifying efforts to ensure its viability.

If "traditional" was removed from this sentence, it would read: To ensure that the viability of the offshore fleet was not jeopardized… This sentence now comes across as direct favouritism for the offshore without any inherent justification.

The categorization of the offshore as traditional preceded the imposition of LIFO as a formal policy. LIFO was justified because of the supposed "traditional" nature of the offshore.

Classifying the offshore fleet as traditional is completely false, and LIFO cannot be justified as protecting the traditional.

LIFO was too vague for too long to be applied

In the 1997 IFMP under the Quota Sharing Arrangements section, DFO made a statement that was the antecedent of LIFO (Tab 2):

> *To ensure that the viability of the traditional, offshore fleet was not jeopardized, the 1996 quota levels in each SFA were set as thresholds. Sharing will only take place in a particular Area, if the quota rises above the threshold in that Area. If quotas decline in future years back down to the thresholds, the sharing will end and the new, temporary entrants will leave the fishery. The overall 1996 quota for all Areas combined will also be used as a threshold to determine sharing. Thus, a major decline in one or more Areas could preclude further sharing in any area.*

This is a vague and confusing statement. Will the offshore's quota in each region be reduced to the threshold before there would be any impact on the temporary entrants? How will the new entrants leave? On masse? By fleet? And there are two thresholds. Could this statement apply in two contradictory ways – sharing would stop in an area because of an overall decline despite the fact that the quota in one area could be above the threshold?

This statement received little attention in 1997 when the inshore entered. The implications of such a statement appeared to be significant but the language was difficult to apply.

This statement, or a variation of it, remained in place until 2003 until a further, slightly modified statement was included in the 2003 IFMP (Tab 14):

> *To ensure that the viability of the traditional, offshore fleet was not jeopardized, the 1996 quota levels in each SFA were set as thresholds. Sharing will only take place in a particular SFA, if the quota rises above the 1996 threshold in that SFA. If quotas decline in future years back down to the thresholds, the sharing will end and the new and the new temporary entrants will leave the fishery. The overall 1996 quota for all SFAs (37,600) is also used as a threshold to determine sharing. Thus, a major decline in one or more SFAs could preclude further sharing in any SFA. Should there be a decline in the abundance of the resource in the future, temporary participants will be removed from the fishery in reverse order of gaining access – last in, first out (LIFO).*

As in 1997, this policy, and its significant implications, is incredibly difficult to make sense of. The policy has now been given a name – LIFO – and some sort of structure, yet different thresholds exist and the application of LIFO is not defined. The final sentence, "Should there be a decline in the abundance of the resource in the future…" is unclear as to what it is referring to. Does LIFO apply only to overall abundance or does it apply to particular SFA abundance? What is the definition of abundance? Perhaps the most important question that goes unanswered is why and how a 37,600 tonne threshold equals offshore viability? This is a harsh condition supported by the vaguest of justifications.

The current explanation of LIFO that is in effect is set out in the 2007 IFMP. Unfortunately, for those who would be impacted by LIFO, the explanation is not any clearer:

> *To ensure that the viability of the traditional offshore fleet was not jeopardized, the 1996 quota levels in each SFA were set as thresholds. Sharing would only take place in a particular SFA, if the quota rose above the 1996 threshold in that SFA. If future quotas declined back down to the thresholds, then the sharing would end and the temporary entrants would leave the fishery.*
>
> *The overall 1996 quota for all SFAs combined (37,600t) is used as a threshold to determine sharing. Thus a major decline in one or more SFAs could preclude further sharing in any SFA. Should there be a decline in the abundance of the resource, new participants/allocations will be removed from the fishery in reverse order of gaining access – last in, first out (LIFO). (Tab 11)*

Ten years after the inshore's entrance into the northern shrimp fishery, the most punitive and controversial clause that applies to the inshore remained incredibly vague. The first paragraph suggests that sharing is managed according to a quota threshold in each SFA and that entrants would leave as particular quotas were reduced. The second paragraph suggests that the entire offshore guaranteed quota is the threshold and that sharing would stop once the total quota reached that level. Perhaps most importantly, this clause of the IFMP gives the strong impression that LIFO would only be applied when the total quota was less than 37,600 tonnes. According to this IFMP, LIFO does not seem to apply to sharing reductions in individual SFAs.

However, the essential point is not to consider which meaning meant what, rather it is to point out the extent of the confusion attached to what LIFO was and is, and how it was and is applied. It is unacceptable and irresponsible that such a critically important component has been vaguely written from the outset.

Thousands of people and dozens of communities and businesses invested hundreds of millions of dollars in a shrimp fishery with no idea of the implications of a confusingly worded section in the 1997 IFMP. The writers of an agreement, which is the essential nature of an IFMP, have an obligation to ensure that the language used is clear and unambiguous.

FFAW-Unifor understands that Ministerial discretion applies and that common law rules of contract interpretation cannot be enforced in the allocation of fish resources. Regardless, the IFMPs exist, they are relied upon, and they are granted a significant degree of authority. For example, this entire review of LIFO acquires particular importance because LIFO is put forth as a justification for quota cuts within an IFMP.

Therefore, we submit that the contract principle of *contra proferentum* should be strongly considered when discussing the abolishment of LIFO. If not for Ministerial discretion, LIFO would have been stricken long ago for *contra preferentum.*

The principle of *contra preferentum* holds:

> *That principle of interpretation applies to contracts and other documents on the simple theory than any ambiguity in a term of a contract must be resolved against the author if the choice is between him and the other party to the contract who did not participate in its drafting (Tab 15) (See Arthur Andersen Inc. v. Toronto Dominion Bank, 1994, CanLII 729 (ON CA)).*

Contra preferentum is a rule of general applicability that applies to ambiguities in contract terms that apply to parties that have no opportunity to modify the wording.

LIFO, if considered as part of a contract, would be a textbook case of where *contra preferentum* would apply. LIFO is a policy aimed primarily at the inshore fleet and other adjacent interests, it is very vague, and the inshore had no opportunity to modify the wording. LIFO should never have been applied.

Unlike the abolishment of LIFO, which is the subject of this entire review, the implementation of LIFO was the source of no public consultations and little stakeholder conversation. According to individuals involved with the Northern Shrimp Advisory Committee from the inshore fleet, LIFO was submitted at the last minute into the IFMP and was not subject to review.

The biggest indictment against LIFO as a coherent policy is the fact that Ernst & Young had to be retained to prove that it was being applied correctly. If Ernst & Young needed to write 40 pages to prove that LIFO was interpreted and applied correctly, how was a fish harvester to understand the implications of LIFO when deciding to buy a license or a new vessel?

It is also inappropriate to retroactively fix a term of an agreement. Once the damage has been done, any changes would require compensation for the lost investment. The Erns & Young review did not cover the 1997-1999 IFMP, which ignores heart of the problem with LIFO. Between 1997 and 2003, more than 300 harvesters had already invested tens of millions of dollars in the shrimp fishery and processing companies had established 12 additional shrimp plants, employing more than 1,500 workers. Those investments could not be undone, regardless of whatever attempts the federal government made to clarify LIFO. (Tab 16)

Lastly, a policy that takes away access, particularly access that was enjoyed for two decades, must be precise and detailed. The language and procedure surrounding the removal of an economic benefit should detail how that is to be done, why it is to be done, and under what circumstances it needs to be done. The authority to conduct such a removal needs also to be explained.

LIFO does not do that. LIFO, quite literally, exists as a few words in an IFMP. The individuals who are subject to LIFO deserve better than that.

The Economic Devastation that LIFO will Cause

The tragedy of LIFO – the policy itself, its vagueness, its imposition on a weakened inshore sector, and its function to protect the economic interests of an offshore fleet – are most clearly demonstrated in the economic damage LIFO will create if it is not abolished. The northern shrimp fishery has been an essential part of the rural economy since 1997 and access to this fishery has saved thousands of people and dozens of communities from financial ruin.

Although LIFO has already had a significant effect on individuals and communities, we have thus far been spared the worst of its impacts. That will no longer be the case if the policy is maintained. Given stock declines and the quota cuts that will result, LIFO, if maintained, will create the largest economic crisis in rural NL since 1992.

We cannot specifically detail what will be lost because of LIFO, but we have a very good idea of what is in jeopardy. LIFO will cause an unprecedented wave of bankruptcies, it will create mass unemployment, and it will trigger a new wave of outmigration that will certainly usher in the end of many communities in rural NL. Rural NL does not have a diversified economy – much of it is based entirely on the fishery. If that is taken away, there is nothing left.

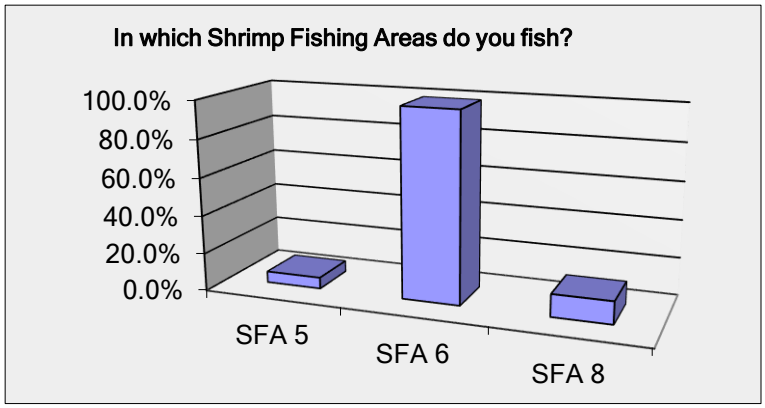


Figure 3

This section will consider the economics of the northern shrimp fishery from the three separate perspectives. The first part will consider those directly engaged in the northern shrimp fishery, primarily the harvesters, but also the plant workers. The second section will look at communities and the immersion of community economics into the northern shrimp fishery. The third part will revisit the regions assessed earlier. This will demonstrate that the economic revitalization in these areas mirrored the growth of the shrimp fishery. The final section will provide a glimpse of what rural NL will look like without a shrimp fishery, using information provided from areas where LIFO has already destroyed the local economy.

Harvesters and Plant Workers

There are shrimp harvesters and plant workers in every region of the province. The vast majority of the harvesters and plant workers reside in rural coastal communities.

In 2015, 99% of the shrimp fleet fished in SFA 6. Clearly, any reduction in access to SFA 6 will have a detrimental effect on shrimp harvesters.

For a large majority of northern shrimp harvesters, including both crew and enterprise owners, shrimp harvesting is not a new career. As Figure 4 shows, 78% of shrimp harvesters have been active in shrimp harvesting for ten years or more. This is consistent across all fleets, with 2J and 3L having the highest percentage of newest shrimp harvesters (though still quite small). The harvesters with more than 20 years experience are located in 4R, which has been actively engaged in the shrimp fishery in the Gulf of St. Lawrence since the 1970s.

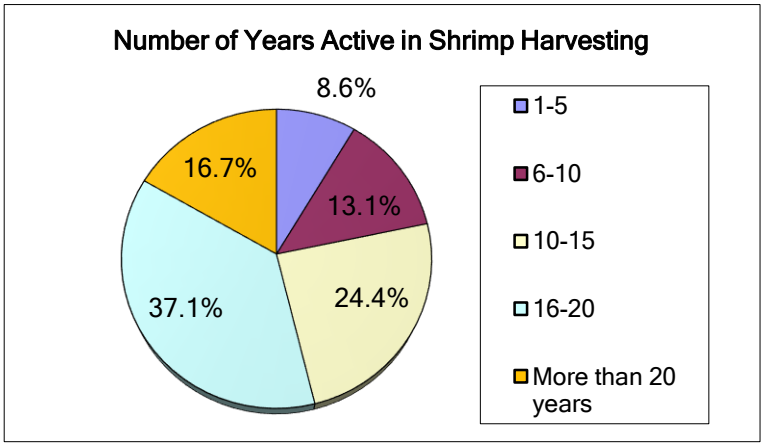


Figure 4

We do not have a comprehensive breakdown of the years of experience for employees in shrimp plants. Given that all of the shrimp plants with the exception of the plant in Port-au-Choix came into operation after 1997, it is likely that the experience breakdown for plant workers would mirror that of harvesters. With that said, many shrimp harvesters likely worked in cod processing plants before the moratorium.

The inshore northern shrimp fishery provides very good wages to shrimp harvesters. As Figure 5 shows, 65% of shrimp harvesters earn in excess of $50,000 per year just from the shrimp fishery.

To put this into perspective, the median income in NL in 2013 was $29,600 (Statistics Canada, http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/famil105b-eng.htm). Accordingly, 90% of all shrimp harvesters earned more than that from shrimp harvesting in 2015. In Canada, the median income in 2013 was $32,020, and the vast majority of shrimp harvesters in Newfoundland and Labrador earned far in excess of that.

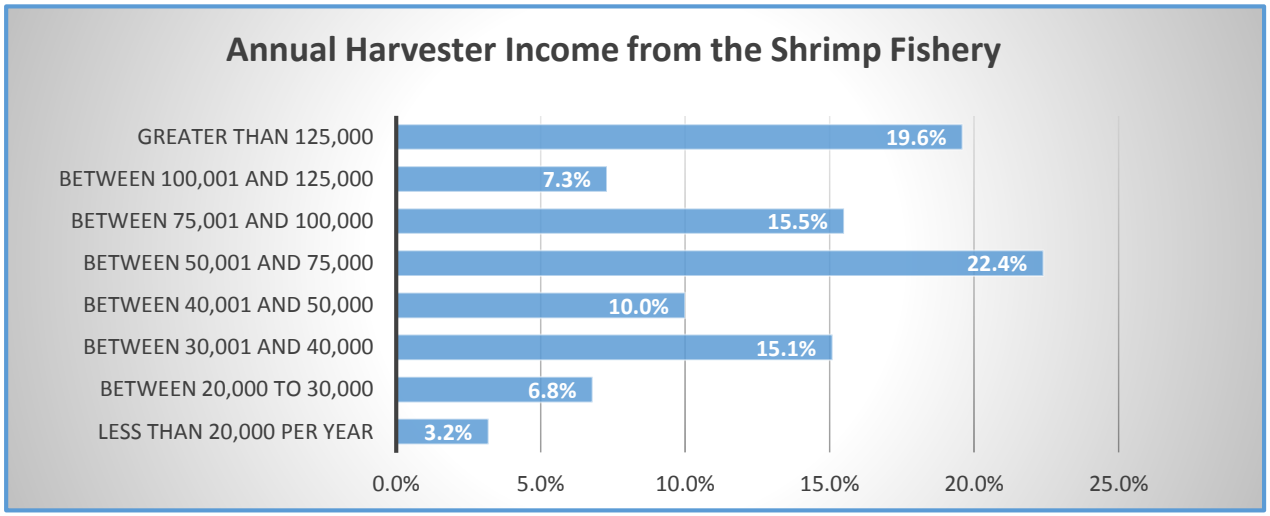


Figure 5

The wealth of the shrimp fishery is also not concentrated in the hands of enterprise owners. Yes, on average, enterprise owners earn more than crew but they also have far larger liabilities, which will be discussed below. As the Figure 7 shows, 54% of all crew earn over $50,000 per year and 85% earn incomes greater than the median income for the province. Enterprise owners are good employers and combined they employ over a thousand crew members per year. Shrimp harvesting incomes cannot be replicated in any meaningful way in rural NL.

Shrimp harvesters – crew members and enterprise owners – are an essential part of the economic backbone of rural NL. They are just as important to the rural middle class as teachers,

nurses, and business owners. In fact without a shrimp fishery in many regions there would not be enough of a population to support teachers, nurses, and business owners.

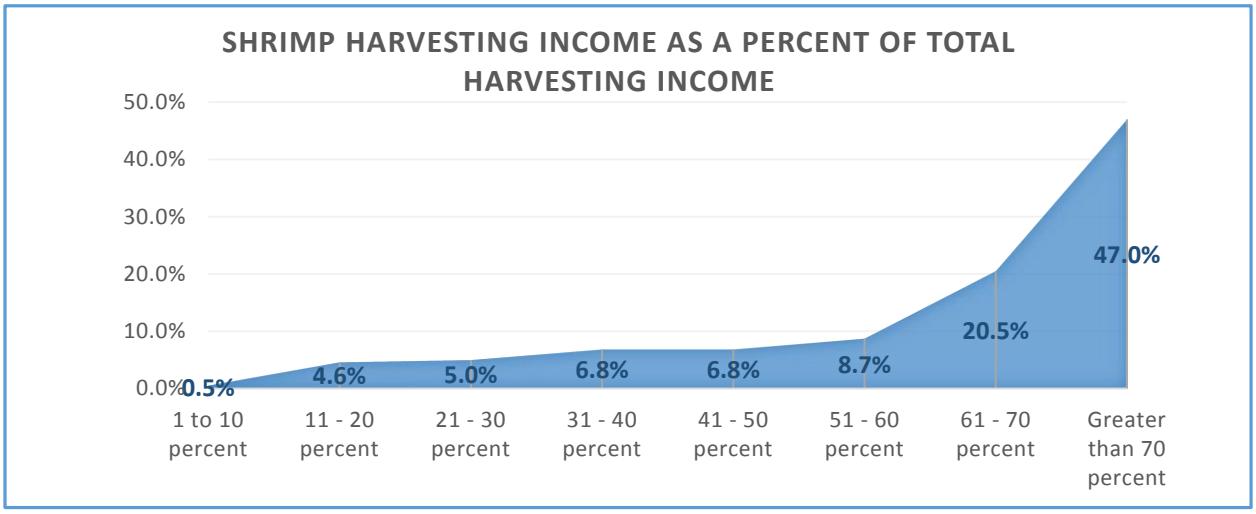


Figure 6

Though the incomes are good, the LIFO policy attacks the viability of shrimp harvesting jobs. As Figure 3 above noted, essentially all shrimp harvesters fish in SFA 6, while comparatively few – 6% and 12% - have access to shrimp in SFA 5 and SFA 8. Any catastrophic reduction in access to SFA 6, which LIFO would facilitate, would devastate shrimp harvesting incomes and shrimp incomes in general.

Most shrimp harvesters are incredibly dependent on the income from the shrimp fishery for their overall harvester income. Figure 6 shows the degree of dependence that shrimp harvesters have on their shrimp income. In 2015, shrimp income made up more than 50% of the total harvesting income for more than three-quarters of all shrimp harvesters. In fact, 47% of all

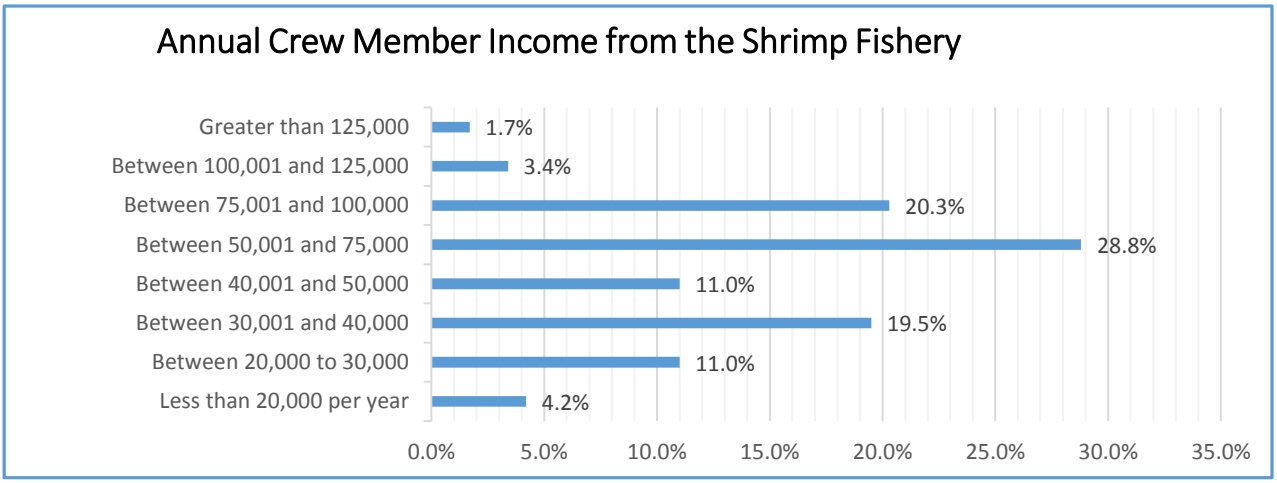


Figure 7

shrimp harvesters rely on the shrimp fishery for more than 70% of their harvesting incomes.

People who earn middle class wages most likely live middle class lifestyles. Shrimp harvesters are important rural consumers – they buy vehicles, snowmobiles, nice clothing for their family, take vacations, and improve their properties. All of this consumer capacity would be gone with harvester income cuts of 50% to 70%. The debt load that often accompanies a middle class lifestyle, however, would remain.

Reliance on the shrimp fishery for total harvester income changes little between the enterprise owner and the crew. As Figure 8 shows, the level of reliance on the shrimp fishery remains very consistent between crew and enterprise owners.

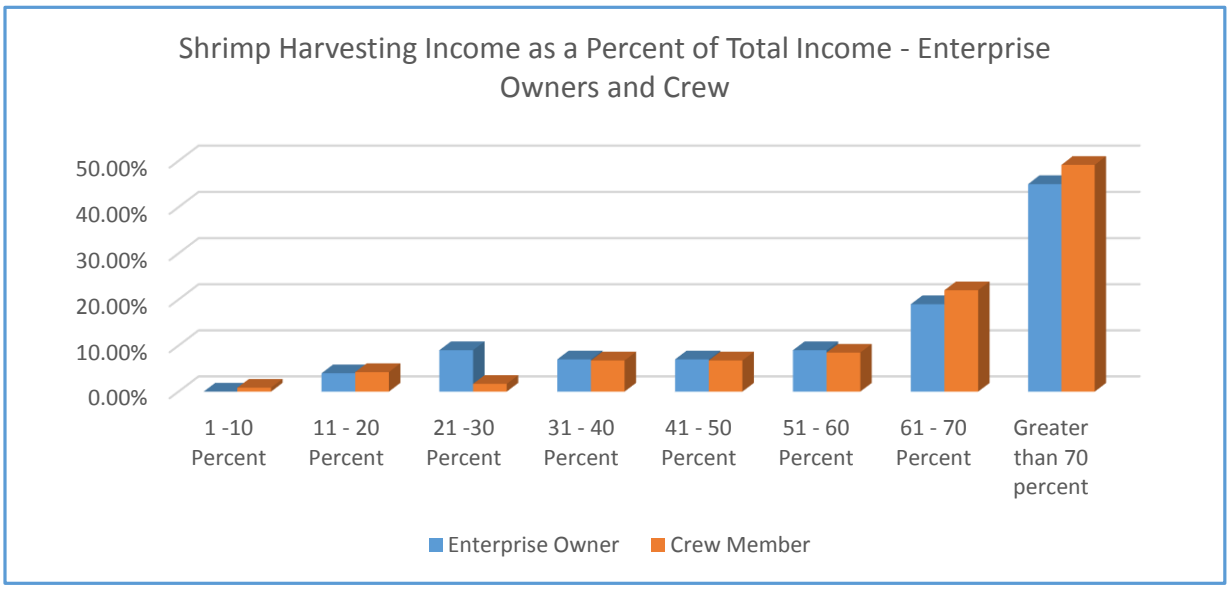


Figure 8

The high reliance level of crew members also speaks to the growing concerns about the fragility of crew commitment to the shrimp fishery. A good and experienced crew is very valuable to a shrimp enterprise, hence the good wages paid to crew members. With little or no resource to fish, however, the good wages become impossible to pay and the shrimp season is too short to be worthwhile. Since crew members have less invested in the shrimp fishery, they are a more mobile workforce. In 2014, an enterprise owner elaborated on this challenge to FFAW-Unifor:

> *After the fishing season ends, fishermen move on to finish the working year with other jobs. Then in the spring they are not available to return to fishing. Further quota cuts to shrimp will mean a shorter fishing season, and the job becomes less appealing to a person in search of employment (Tab 17)*

LIFO has already impacted the economics of crew retention on inshore shrimp vessels. In interviews conducted by FFAW-Unifor in 2014 one enterprise owner noted that LIFO-managed reductions in quota had led him to reduce crew "to keep a higher wage share." Another enterprise owner stated that, "My business has already lost two crew members because I had to increase crew share to retain those I have today."

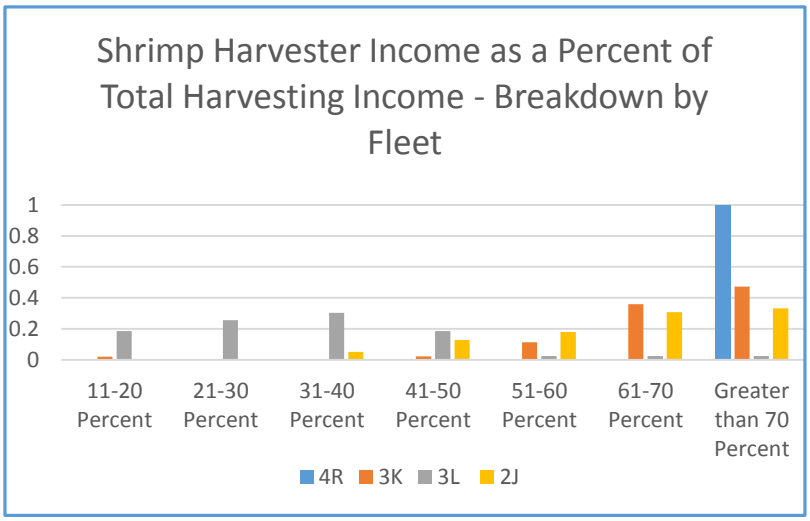


Figure 9

With the exception of 3L, every other fleet depends heavily on shrimp. In 4R, the entire shrimp fleet is dependent upon the shrimp fishery for more than 70% of their fishing income. In 3K, more than 80% of the shrimp harvesters depend on the shrimp fishery for more than 60% of their income, while in 2J this reliance rate applies to 65% of the fleet. Harvesters in 3K, 4R and 2J are keenly aware of this reality. With crab stocks in sharp decline in 3K, one 3K shrimp harvester noted last year that, "Without shrimp, we will be bankrupt." In fact, every 3K, 4R, and 2J enterprise interviewed in 2014 stated that there enterprises would not be viable without shrimp.

For onshore shrimp plant workers, we do not have the same level of detail about incomes or resource dependency. We do know that there are approximately 1500 plant workers facing financial ruin if LIFO is maintained. LIFO has already exacted a financial toll from essentially all shrimp harvesters. At the time of the *Report of the Independent Chair: MOU Steering Committee* in 2011 there was noted to have been 2089 shrimp plant workers. Since that time, there have been three shrimp plants closed. Though two of these plants were shut down due to non-fishing events (one burned and another was severely damaged during Hurricane Igor), the key point is that they were not reopened because LIFO was already being applied to reduce inshore shrimp quotas. Thus, LIFO has already cost approximately 500 shrimp plant jobs.

It is difficult to pin down the hourly pay of most plant workers. In the 2011 MOU report, the average wage is listed at $11.70 per hour but this number is outdated and inaccurate. Most shrimp plant workers work a large number of overtime hours and overtime rates differ according to plants. The Port-au-Choix plant workers are represented by FFAW-Unifor. In assessing that plant's collective agreement and work schedules, we estimate that the average worker at the plant is earning $16.00 per hour.

Like crew members on vessels, plant workers were among the first victims of the LIFO policy. Plant workers do not benefit from increased market prices, they are entirely dependent on having an adequate amount of product to process. For many plants, the shrimp season would extend past 20 weeks and the plants would run two or three shifts. Because of LIFO, that is no longer the case. In Port-au-Choix, the plant only operated for 18 weeks in 2015, which was a 6 to 10 week drop from just a few years ago. The plant was also only able to operate 1 shift as

regular full-time. Overall, LIFO has already cost dozens of plant workers in the Port-au-Choix area thousands of dollars in individual lost income.

For enterprise owners the cruelest impact of LIFO is not necessarily the decline in incomes, but the loss of investment. Enterprise owners have invested heavily in the shrimp fishery, which they were encouraged and often required to do.

When the inshore fleet entered the fishery in 1997, harvesters were required to gear up. Gearing up was an involved and costly undertaking that meant permanent changes to fishing vessels that would not have been made if harvesters were not entering the shrimp fishery. For most vessels, gearing up required all of some of these changes:

- Hydraulic systems
- Two deck winches
- Net drum
- Pullmaster and Capstan
- Trawl blocks
- Warps
- Doors
- Bridles
- Hammerlocks
- Trawl monitoring system
- Time on drydock to install hydrophones, reinforce counter with stainless steel, build and install A-frame

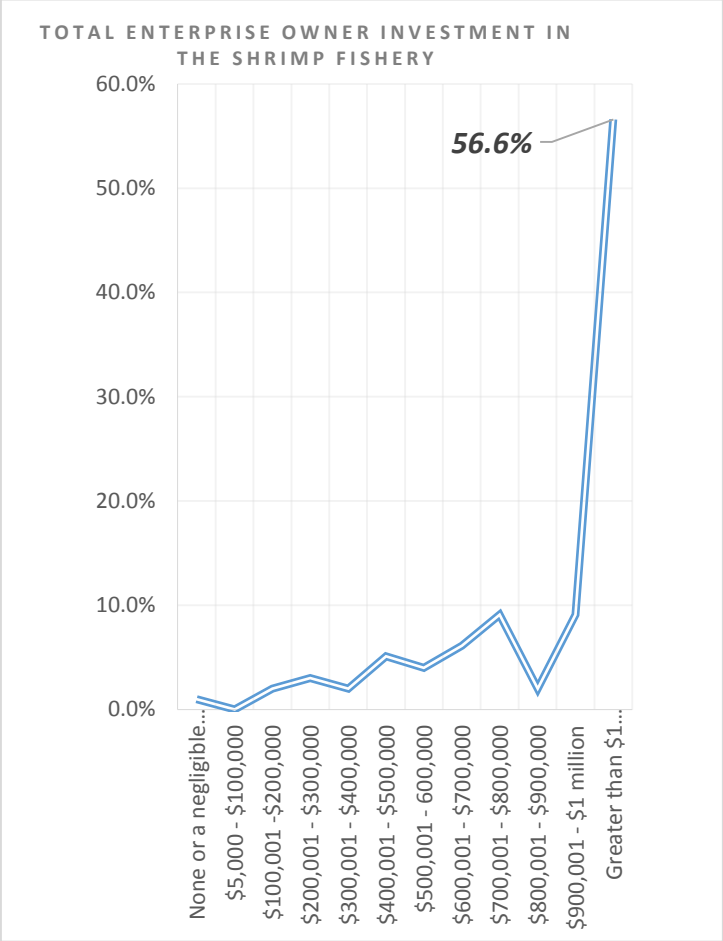


Figure 10

This was the basic gearing up. One harvester noted that after he had geared up he realized that his engine did not have adequate power for the shrimp fishery and a new engine needed to be bought. The cost of a new engine in 1997 was $120,000.

The exact cost of gearing up would differ across vessels, though a reasonable estimate for gearing up has been put at $200,000, more if additional modifications such as engine improvements needed to be made. This was paid for by the harvester with no provincial government contribution. This was essentially the shrimp license fee, as the license would only be issued for harvesters that had geared up. In testimony before the Standing Committee on Fisheries and Oceans in October 2001, former FFAW-Unifor President Earle McCurdy estimated the total cost for gearing up for the 360 inshore vessels engaged in the northern shrimp at $60 and $70 million dollars. This estimate was made in 2001 and it is highly likely,

given current debt levels, changes in fisheries' policy, technological changes, inflation, and other variables that the total harvester investment, minus operation costs, is in excess of $200 million since 1997.

The shrimp fishery is the most costly and investment-intensive fishery in the history of the inshore fleet. As Figure 10 shows, 56.6% of enterprise owners state that they have invested more than $1 million in the inshore shrimp fishery. Overall, 83% of enterprise owners have invested more than $600,000 in the shrimp fishery.

This investment by several hundred shrimp harvesters was justified and encouraged by policies put in place by the federal government, which directly contradicted any notion of the inshore as temporary entrants. As mentioned above, harvesters were first required to gear up, which required an average investment of a few hundred thousand dollars. For many harvesters dealing with the economic decline of the moratorium, this investment was likely the largest they had ever made in the fishery. Two hundred thousand dollars was likely more than most of them had paid for their homes. This was not an investment most harvesters would be able to rebound from if it went poorly.

While harvesters were asked to gear up, processing companies were also in the midst of committing a significant investment into the shrimp fishery. It is likely not coincidental that the three weeks before the announcement of the inshore's entrance into the shrimp fishery the provincial government announced its new policy for a more viable and stable fish processing sector (Tab 18). Then Minister of Fisheries and Aquaculture stated that:

> *"Establishing a clear, transparent policy framework is a major step in reshaping the fishing industry, especially in terms of providing the opportunity for the private sector to make sound investment decisions and to generate more stable employment and higher average annual incomes for those dependent on the fishery for their livelihoods."*

One of important changes announced in the framework was the designation of core/multi-species plants. Allowing multi-species plant was clearly aimed at the anticipated shrimp fishery, as it would allow processers to more economically invest in shrimp harvesting capacity.

Designating plants as "core" was a key provincial government commitment to adjacency and historical attachment in places that were heavily impacted by the moratorium. Core plants, which were given priority in the issuing of licenses, must have processed 1000 tonnes of groundfish in the 1987-1991 period. Many of the shrimp plants that were developed, such as St. Anthony, Twillingate, Catalina, Old Perlican, Bay de Verde, were given core standing. By focusing on core plants, the NL government ensured that the benefits of the new shrimp and crab fishery stayed in those regions long associated with cod processing.

The construction of shrimp plants was a massive financial undertaking for the processing sector. In giving evidence to the Standing Committee on Fisheries and Oceans in 2001, Mr. Alistair O'Reilly, then the president of the Fisheries Association of Newfoundland and Labrador (FANL, now Association of Seafood Producers), stated that the processers that he represents had invested between $130 and $140 million in the shrimp fishery. Mr. O'Reilly also pointed out that this was done with no public money or loan guarantees. (Tab 7) Given that this statement was

made in 2001, it is likely that many more millions of dollars have been invested over the past 15 years.

Between 1997 and 2006, the inshore shrimp fishery moved forward without any warning as to its supposed temporary nature. Quotas increased and investments were made. There were several years of investment and DFO did not issue any warning as to how vulnerable this investment could be. Temporary shrimp licenses were bought and sold and there developed a saying in the inshore shrimp fishery – nothing is more permanent than a temporary shrimp license.

The most glaring DFO policy contradiction that encouraged inshore harvesters to invest in the northern shrimp fishery occurred in 2006-2007. At this time LIFO was already established, though, as was pointed out earlier, it was still vague and confusing. In 2006 the governments of Canada and Newfoundland and Labrador partnered on a review of NL's fishing industry, which produced the Newfoundland and Labrador Fishing Industry Renewal strategy.

This strategy was developed in a comprehensive manner. There were several working committees with membership from both DFO and the province and an industry-government steering committee to guide the working committees. During June and July of 2006 there were 17 meetings of these various working groups and a progress report was developed and delivered to the Minister of Fisheries and Oceans, the NL Minister of Fisheries and Aquaculture and the Premier of the province.

As the strategy moved forward, several general goals were stated. These were for a fishery that could:

- Adapt to changing resource and market condition;
- Extract optimal value from world market;
- Provide an economic driver for communities in vibrant rural regions;
- Provide attractive incomes to industry participants; and
- Attract and retain skilled workers.

The LIFO policy that was then in place would serve as a serious roadblock to four of these five points. But it appears it was not considered. LIFO was either forgotten about by the bureaucrats or thought of as a policy that was unenforceable. Whatever the reason, the policies developed from the Renewal Strategy could not be reconciled with LIFO.

When the strategy was released, the provincial government released a series of backgrounders to provide context to the changes that the strategy would pursue. One backgrounder (Tab 19) notes that there were 40 meetings with approximately 800 participants, primarily harvesters and plant workers. These were the comments and concerns of harvesters as detailed in the backgrounder:

> *During the consultation process, most participants recognized that change in the fishing industry is required to improve the overall viability of all industry participants. There was general support for the voluntary rationalization of harvesting capacity and recognition that rationalization could have a significant impact on fishing communities. Reaction to*

the level of reduction required, and the best options for achieving the desired reduction, was mixed.

In terms of vessels, many harvesters were of the view that larger vessels were of the view that larger vessels are needed to improve safety and crew comfort; extend the fishing season; and accommodate the challenging environmental conditions in distant water fisheries.

There was a view expressed by harvesting interests on the need to address trust agreements involving processors, and protect the owner-operator (eliminate rent extraction) and fleet separation policies before moving ahead with any rationalization process.

These harvester concerns and comments are interesting because of what is there and what is not. What is there is an intention to buy bigger vessels, a harvester investment that would routinely exceed $1 million dollars. What is not present is any mention of LIFO. Granted, as explained in this submission, the LIFO policy at this time was a confusing mess, there is still no recorded caution by representatives of DFO that any planned harvester investment could be jeopardized and rendered worthless by an existing DFO policy.

As opposed to dissuading investment, the Government of Canada and Government of Newfoundland and Labrador Fishing Industry Renewal strategy did exactly the opposite. The strategy brought about further significant changes to the economics and investment levels of the shrimp fishery.

The biggest change was the conversion of all temporary inshore shrimp licenses to permanent. This was a crucial policy change for investment in the inshore fishery and the implications of the change have never been properly defined. At the 2007 Northern Shrimp Advisory Council (NSAC) meeting the issue of license conversion was extensively debated and a review of the minutes shows that there was no consensus on what conversion to permanent would mean. The minutes cite the Chair of the meeting – a DFO employee – saying the following:

"…conversion of temporary to regular would not affect allocations, i.e., LIFO principles are not being changed. All we are talking about is a name change so that people can rationalize (Tab 20)."

This comment is ignorant to either what LIFO means, what rationalization is, or both. It is difficult to believe that DFO did not understand that combining, which was the heart of self-rationalization, meant that inshore harvesters would have to invest more in the shrimp fishery.

It is more likely that DFO did not understand what LIFO meant. The above-noted quote essentially says that conversion was being done to encourage more investment but that the policy (LIFO) that would render that investment valueless was still in place. This statement makes no sense.

All other participants in the NSAC meeting seemed to understand that converting shrimp licenses to permanent and allowing combining completely contradicted the LIFO policy. NSAC was essentially split on the idea, with offshore interests opposing it and inshore supporting it. The Government of NL was so convinced that the conversion to permanent negated LIFO that it

was outraged three years later when the first LIFO-managed cuts to the inshore were implemented. In a release noting its anger over the application of LIFO, the province stated, “The inshore sector was made a permanent participant in the Northern shrimp fishery by the Federal Government in 2007 and therefore should not be subject to the last-in first-out approach.” (Tab 21)

The second significant policy from the Fishing Industry Renewal strategy was allowing inshore shrimp harvesters to combine. Combining is involves one shrimp license holder buying another shrimp license to combine the two together. With combining, inshore shrimp licenses were transformed into a commodity, with fluctuating prices depending on the market.

Combining allowed shrimp harvesters who wanted to leave the industry to sell their licenses and recoup some of the investment made by gearing up and other capital costs related to the shrimp fishery. It also allowed harvesters to reinvest in their enterprises by securing more quota. The problem with combining, however, is that in an environment of a declining quota, an enterprise need to combine at an increased frequency to maintain previous shrimp quota levels. As one harvester recently told FFAW-Unifor, “My biggest investment and expense are the licenses I’ve purchased through combining.”

The 2007 policy on combining initially allowed for a maximum of two licenses to be combined. In 2012, over the objections of the inshore sector, DFO expanded the combining policy to allow for three licenses to be combined. The inshore sector had advised that 3-for-1 combining would fuel a further wave of investment in an industry where the inshore’s long term presence was challenged by the LIFO policy. The sector was ignored.

It is hard to get an overall assessment of the cost of shrimp licenses since 2007. Harvesters are reluctant to discuss the specifics of the prices paid for licenses and there is the strong hidden hand of the processing sector in the shrimp license market that is hard to account for. One harvester recently noted that in 2007 the average shrimp license in 3K, which carried over a half-million pounds of shrimp, sold for $500,000. Over the last eight years the cost of a shrimp license has essentially doubled – $800,000 to $1 million – while the amount of shrimp attached to a license is approximately half.

In many ways, DFO’s contradictory pursuit of LIFO and combining presented itself as a cruel bet for harvesters. Harvesters were permitted and encouraged to invest huge sums of money into a fishery that DFO had every intention of removing them from in the near future.

The third policy from the Fishing Industry Renewal strategy to encourage harvester investment was that which allowed harvesters to use their new, permanent licenses as security for loans to help grow their shrimp enterprises. By allowing shrimp licenses to be used as collateral for shrimp fishing loans, DFO established an investment and debt circle that made no sense so long as LIFO existed. For the licenses to maintain value and for the harvester to satisfy the incurred debt, the harvester would need access to a viable amount of quota. LIFO, however, removes that viable amount of quota with no consideration as to the debt load of the inshore harvester. The most tragic part of allowing licenses to be used for collateral is that the banks that issue the loans expect to be repaid, regardless of the inshore’s access to the shrimp resource. If LIFO stays, vessels will be confiscated once bankruptcies are declared.

The final policy from the Fishing Industry Renewal strategy that encouraged investment was the provincial government's extension of the Provincial Fisheries Loan Guarantee Program (FLGP). Prior to 2007, the FLGP maximum loan guarantee had not been updated since the 1990s and it was no longer a sufficient guarantee for harvester loans that had grown substantially in value. In the Renewal strategy the maximum loan guarantees were increased from $1.3 million to $2 million.

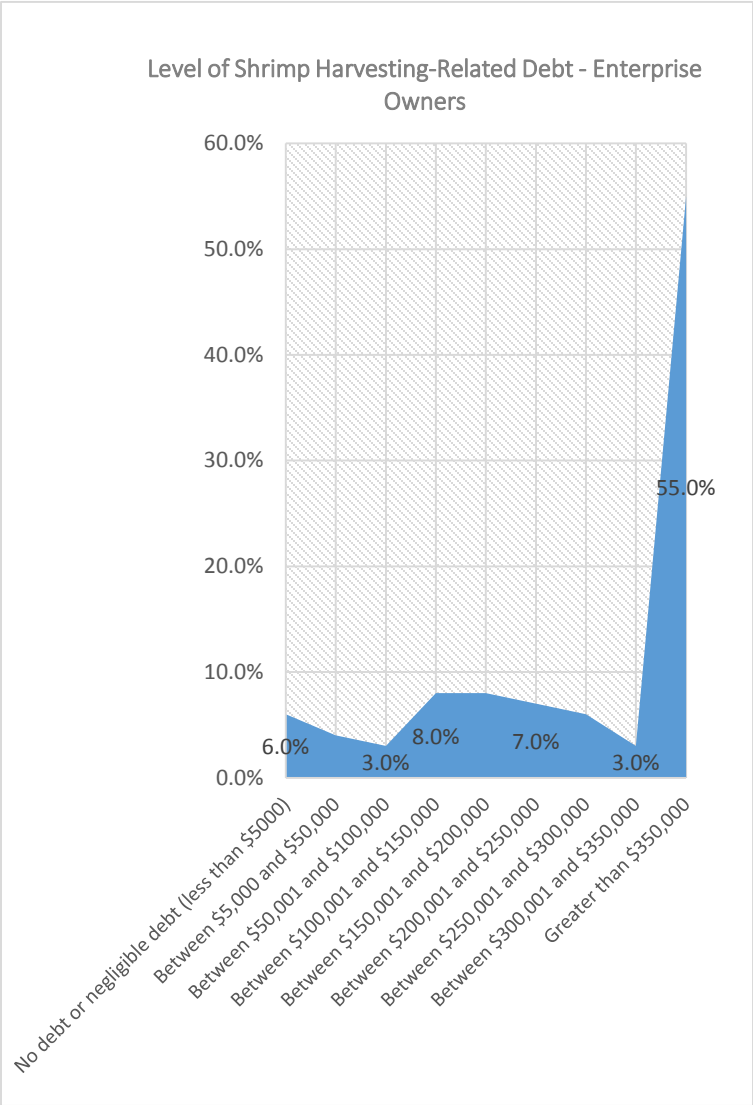


Figure 11

The loan guarantees did not replace the banks nor did it replace the need for harvesters to possess adequate collateral. But the loan guarantees did facilitate bigger loans, as they provided the banks with more confidence in making large loans to harvesters. The enhanced loan guarantee program freed up credit for shrimp harvesters to invest.

The loan program also increased the exposure of the provincial government to the financial well-being of fish harvesters. Logically, this exposure makes no sense with respect to shrimp harvesters if DFO's LIFO policy was thought to still be in force. The province acknowledged in 2007 that its exposure under an enhanced loan program was up $100 million dollars, a significant amount of which would be in the shrimp fishery. The Fishing Industry Renewal Program was a partnership between the provincial and federal governments. It would be interesting to know what warnings the federal government gave to its provincial counterparts regarding the threat of LIFO when discussions took place on extending the FLGP. According to the province, it is currently guaranteeing $8.7 million in inshore shrimp harvester loans. Given the different financing options for harvesters, the province states that it is guaranteeing only a portion of the transactions in the inshore shrimp fishery.

As Figure 11 shows, shrimp harvesting-related debts for enterprise owners are very high. In fact, we were advised by a harvester that the debt categories that harvesters could select from were too low and that many harvesters debt levels are greater than $1 million. For more than half of all shrimp enterprise owners, current shrimp-related debt levels are greater than

$350,000. While the shrimp fishery has always been a capital intensive undertaking (see gearing up, above) costs remain high throughout the shrimp fishery because of high vessel maintenance/purchase costs and the costs of combining licenses.

The high debt levels in the fishery are also not indicative of debt related to the overall operation of a fishing enterprise. Most shrimp license holders participate in other fisheries, such as crab, cod, or capelin. But as Figure 12 shows, shrimp-related debt levels often comprise the bulk of all harvester debt. Sixty-three percent of enterprise owners state that their shrimp debts make up 60% or more of their total harvesting debts.

LIFO has turned the harvester high debt levels into an incredible source of worry, frustration and general powerlessness for enterprise owner. One harvester told the FFAW in late 2014:

> *"My crew member left my boat to go on an offshore shrimp boat. He had no investment in the shrimp fishery. My investment was $350,000. He can stay in the shrimp fishery with no investment; with a $350,000 [investment] I will have to leave."*

In a recent survey of shrimp harvesters conducted in preparation for this submission, harvesters were asked if they would be able to make debt payments and support their families if their 2016 shrimp cap was reduced to one-quarter of the 2015 level. Fifty-seven percent of harvesters said "Definitely Not" and a further 23.7% said unlikely. Just one harvester replied that such a decline would be no problem.

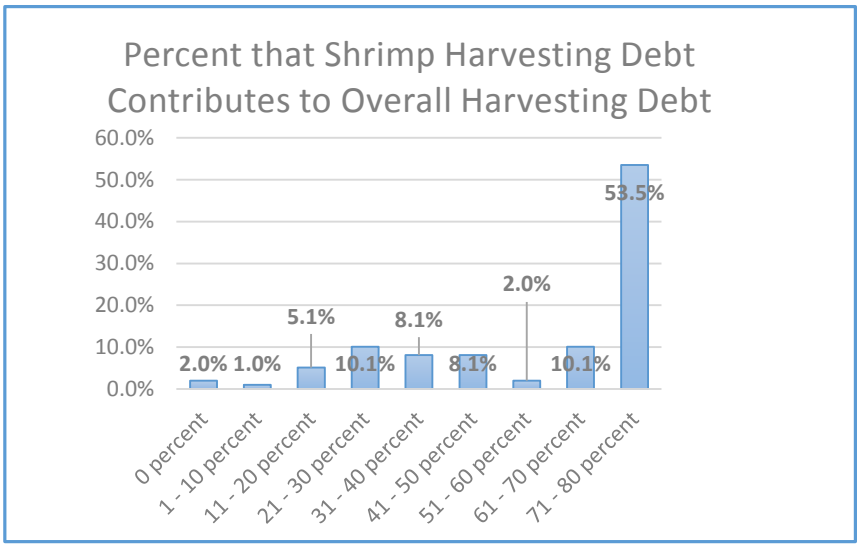


Figure 12

The Municipal Impact of LIFO

Municipal governments have often been the silent victims of bad fishery management policies from DFO. Towns are the facilitators and direct and indirect beneficiaries of a strong fishing economy. As the caretakers of local infrastructure and providers of local services, towns ensure that fish processing plants have the water, sewer, and roads necessary to process product and ship it out. In turn, municipalities directly benefit from the payment of municipal taxes by the plants. Towns also indirectly benefit from a plant's existence because the plant usually fuels different spin off businesses that are also subject to municipal taxation.

Municipalities rely on two primary forms of taxation revenue: commercial and residential, both of which are expressed in the form of a mil rate. The residential mil rate must be the same across all properties. Commercial rates, however, allow for more flexibility as it is divided into two categories – commercial and business. Like the residential rate, the commercial rate must be consistent across all commercial properties.

The business tax rate provides flexibility to municipal taxation. With business tax, municipalities can set different rates for different sorts of businesses. On Fogo Island, for example, the commercial rate is 8.25 mils while the business rate for *fish processers* is 11.25 mils.[1] In this case, fish processing plants would pay a commercial tax of 8.25 mils *and* a business tax of 11.25 mils.

In general, a municipality's financial health and sustainability is often linked to the strength of its commercial tax base. It is far easier for a town to tax big processing companies at a higher tax rate than to increase residential taxes for the entire town. This is particularly the case for rural towns where the population is usually older with more people living on fixed incomes.

Fish processing plants have always been an important source of revenue for communities in NL. The fishery is by far the largest industry in rural NL and there are very few other industrial opportunities. While tourism has flourished in the province, most new businesses created are small and would not provide the municipal revenue opportunities of a processing plant, oil refinery, or pulp and paper mill.

The two following situations provide an impressive and a tragic example of how important fish plants are to the success of municipalities:

> *Example 1.* The Town of Port-au-Choix is the site of the first fish plant built in the province. It is considered a world class facility. The town also has an important tourism industry based around a local archeological site and Parks Canada interpretation centre. During the summer of 2009, with the shrimp plant operating at full capacity and the tourist season at its high point, the town experienced critically low water supplies. The town was left with a choice – shut down the interpretation centre and use its water supply or shut down the shrimp plant and ration water with the town's residents. The town chose to keep the plant open and close the interpretation centre.[2] The plant is the biggest local tax payer - $65,000 per year - and the economic backbone of the municipality and region.
>
> *Example 2.* Trepassey in the 1970s and 80s was a significant regional centre that offered year round employment at a Fisheries Product International (FPI) plant that processed the groundfish harvested by the offshore fleet. People moved to the town from all over the province. To many in the town "FPI was our community development."[3] In 1991 the plant employed 726 people from the region on a fulltime basis and an

[1] Town of Fogo Island Minutes of Council Meeting December 16, 2014, http://www.townoffogoisland.ca/home/files/minutes/minutes_december_16_2014.pdf

[2] "Case Studies," *7 Steps to Assess Climate Vulnerability in Your Community,* Department of Environment and Conservation, 2013, p. 35.

[3] "A Trepassey Story: Reflections on our Community Developments, the Impact of the 1991 Fish Plant Closure, and on Some Pathways Travelled In Search of Community Survival," by Wif Sutton, 2003, p. 3.

additional 200 people part-time. The plant also paid over $86,000 a year in municipal taxes, making it easily the largest single tax payer in the town.[4]

In 1991, the FPI plant closed forever. Various income stabilization programs were applied to substitute for the plant's wages and to maintain hope but none were very successful. Since its closure in 1991, nothing has effectively taken the place of the FPI plant. The population of the community has decreased by more than 60% since 1991, declining from 1,375 residents to 545.[5] In 2013, Trepassey's commercial tax revenue was just over $126,000,[6] just forty thousand dollars more than the total tax bill paid by the FPI plant 22 years earlier.

There are 10 shrimp plants in the province, 9 of which are located within a municipality (one plant is located in Black Duck Cove which is a local service district and has no commercial taxation authority). In its 2011 Census of Municipalities, Municipalities Newfoundland and Labrador, the advocacy group for town in the province, classified municipalities in four different classes:

- Very Small Municipalities – fewer than 500 people (138 in the province)
- Small Municipalities – between 501 and 1,000 people (63 in the province)
- Medium Municipalities – between 1,001 and 3,999 people (49 in the province)
- Urban Municipalities – 4,000 or more people (19 people)

Clearly, a significant majority of the province's towns are small and very small. These are not communities with a great capacity to adapt or find new economic opportunities.

Of the nine shrimp plants located in municipalities:

- Three are located in Very Small Municipalities – Anchor Point, Bay de Verde, Charlottetown
- Two are located in Small Municipalities – Port-au-Choix, Old Perlican
- Three are located in Medium Municipalities – Fogo Island, Twillingate, St. Anthony
- One is located in an Urban Municipality – Clarenville

Figure 12 shows the level of reliance that municipalities with shrimp plants, as a class, have on commercial taxes. The chart uses the budget years of 2009 to 2013, as those are the years for which the budget information has been compiled. To provide adequate context, very small, small, medium, and urban municipalities have also been put together as a class and there level of reliance on commercial revenue is shown. While Clarenville does have a shrimp plant, it has not been included in the shrimp plant class as it is a large centre with a diversified economy. Clarenville is included in the urban municipality class. In 2013, Clarenville's reliance on commercial taxes for total revenue was 35%. Including it would have increased the level of reliance of the municipalities with shrimp plants class.

[4] *Ibid.,* p. 13 & 16.

[5] Economics and Statistics Branch, Department of Finance and the Rural Secretariat, Executive Council, in cooperation with Memorial University, *Regional Demographic Profiles Newfoundland and Labrador* (St. John's, Government of Newfoundland and Labrador, 2007), p. 39 and Community Accounts, see www.communityaccounts.ca.

[6] Trepassey, 2013 Municipal Budget Submission Form, Section 1.1.2 and Line 1.3.2.

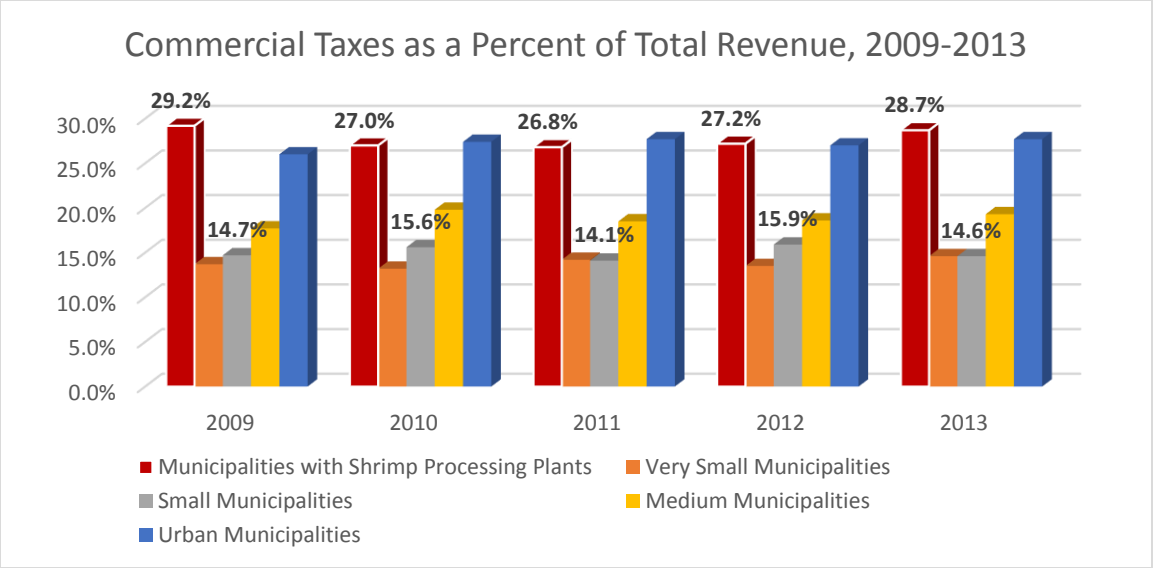


Figure 13

The above chart shows some astonishing information about how important shrimp plants are to the finances of the municipalities in which they are located. As noted above, there are no urban municipalities counted in the shrimp plant class. Nonetheless, the above chart shows that as a class, towns with shrimp plants are routinely more reliant on their commercial revenue than the City of St. John's, Mount Pearl, or the towns of Gander and Grand Falls-Windsor. This is not a coincidence. Budget information from each of the towns with shrimp plants will show this fact. We expect the larger centres to be reliant on commercial taxes because they are the hubs of commercial activity. We do not expect it from the class of municipalities that have shrimp plants.

The strength of the commercial tax base for municipalities with shrimp plants is even more impressive when compared to the commercial tax bases of other municipalities with similar populations. Five shrimp plants are located in small or very small municipalities. Between 2009 and 2013, municipalities in this group, which makes up 73% of all municipalities in the province, collected between 13.2% and 15.9% of total revenue from commercial revenue. The municipalities with shrimp plants collected between 26.8% and 29% from commercial revenue. This is a significant difference.

The commercial tax base of municipalities with shrimp plants is more impressive when considered from a local taxation perspective. Municipal budgets include several sources of non-local revenue, like provincial and federal government transfers, as well as the total value of the province's contribution to capital works projects. Thus municipal budgets can skew the actual amount of revenue that a municipality can collect at the local level. The biggest concern for a municipality is a decrease in local taxes, as that is what signifies an economically sustainable municipality.

Figure 14 uses the same categories as in Figure 13 above. This chart, however, examines how much commercial taxation accounts for total taxation across the categories. As you can see, towns with shrimp plants are far and away more reliant on commercial tax revenue than the other four categories of municipalities. For most small and very small municipalities, there is little commercial tax base remaining.

In contrast, the towns with shrimp plants have a very heavy reliance on commercial taxes, and as will be explained below, this reliance is linked very closely to the shrimp fishery.

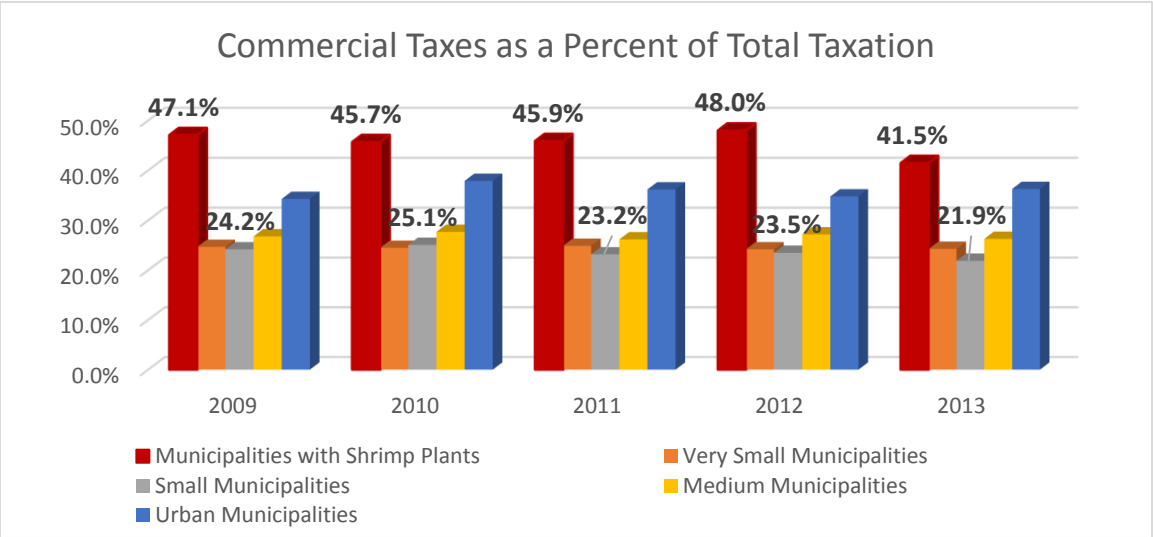


Figure 14

There are two reasons why shrimp plants lead to strong municipal taxes within a municipality. The first is that in some municipalities, particularly Anchor Point, Charlottetown, and Bay de Verde, the shrimp plant was one of only a few businesses in town and it was by far the largest business. In Anchor Point in 2013, for example, there were only 6 businesses, two of which paid the minimum tax of $350 because the assessed value of the commercial properties were low, while two others paid a combined $1,900 in commercial taxes. The remaining $20,982 in commercial taxes are paid by two companies that form part of the local shrimp fishing business. Therefore, 82% of the town's entire commercial tax revenue comes from the shrimp plant. To put into further perspective, the shrimp plant accounts almost 12% of all tax revenue for the town. The shrimp plant's taxes are more than both the province's operating transfer to the town and the federal government's gas tax transfer.

Similarly, there is a shrimp plant in the town of Charlottetown on the south coast of Labrador which drives local revenue. We are not certain how many businesses are located in Charlottetown, but for a town of 350 people we are making the reasonable assumption that there would not be many; there would certainly not be any of the size of the Labrador Fisherman's Union Shrimp Co. Despite a small number of businesses, commercial taxes make up 49% of all revenue in Charlottetown and 63% of all taxation revenue. Clearly the shrimp plant is the driver of local revenue.

For other municipalities, the shrimp plant becomes the centre of the local and regional economy upon which everything else is built around. The Town of Old Perlican has a relatively small population of approximately 660 residents. Nonetheless it has 66 commercial properties, approximately two-thirds of which are tax exempt for a variety of reasons. But the mixed-use plant Old Perlican and the neighboring plant in Bay de Verde (prior to this year) were the biggest employers in the region, with a combined workforce of close to the 1,000. To service this workforce and the plants in the area, gas stations, restaurants, grocery stores, hardware

stores, old age homes, and so on were built in Old Perlican. These other commercial interests also pay commercial taxes.

Nonetheless, the plant remains the centre of the commercial activity. Mayor Bruce Button of Old Perlican recently stated in an interview that at least one-third of the town's entire budget is connected to the shrimp fishery. The shrimp plant is the largest tax payer in the town.

The shrimp plants are also the largest tax payers in other municipalities where the larger local economy revolves around the fishery:

- In Twillingate, the shrimp plant has a tax agreement with the town to pay $100,000 per year, water included;
- In Port-au-Choix the shrimp plant has a tax agreement with the town for $60,000 per year, water not included.
- The Fogo Island budget does not disclose a tax agreement between the town and the Fogo Island Co-Op. The Co-Op did have tax agreements with the various towns on Fogo Island prior to the amalgamation in 2011 and these appear to be values at between a hundred and two hundred thousand dollars per year.

It is important to note that the presence of a hospital or school in a community does not diminish the importance of the shrimp plant to local revenue. Governments cannot tax other governments, therefore a town derives no direct tax revenue from these buildings.

A good and consistent water supply is essential for the operation of a shrimp plant. In most municipalities, the provision of water is where towns are most partnered with shrimp processing plants. Water infrastructure is very expensive – it is expensive to install and repair and it requires regular maintenance. Given this expense, towns often attach meters to the use of water by the plant and charge a per gallon premium. This is in contrast to most other businesses and all other residences where water is not metered and the property owner pays a flat fee.

Several municipalities with shrimp plants constructed water lines specific for the plants. In at least one town – Old Perlican – the water line runs from a water source that only services the plant. Installing these lines is expensive work and towns charge water rates to ensure that the water lines are worth the cost. In Old Perlican shrimp plant payments for water in 2016 are expected to be $250,000, which is three times the value of the combined water and sewer charges from all the homes in the community. As mentioned above, the Town of Twillingate's tax agreement of $100,000 with the local shrimp plant includes water costs. Both the mayor and town manager of Twillingate noted in an interview that this was the best deal for a shrimp plant in the province. In Port-au-Choix, the fish plant pays a metered rate for water, for which $22,649 was paid in 2015. This was the lowest amount paid in several years, reflecting the reduced operation of the plant as a result of LIFO-managed cuts.

The most overlooked method by which municipalities collect revenue from shrimp plants is through the poll tax. Since shrimp plants are often important regional employers, shrimp jobs pull in additional workers from outside of the town. A person who is a resident of a local service district or unincorporated area and travels to a town for work can be subject to a poll by the town where the job is located. In Bay de Verde, the poll tax applied to the workers in the shrimp plant

provided approximately $50,000 per year to the town. After the plant was destroyed earlier this year, the town had to submit a new municipal budget to reflect this reduction in revenue. In most shrimp plant towns, poll tax rates are unusually high:

- Port-au-Choix - $18,600 (2016 Budget)
- Anchor Point - $10,320 (2013 Budget)
- Old Perlican - $40,000 (2016 Budget)

Not all of these poll tax charges would be levied against individuals working in the local shrimp plants, as some town residents would pay the tax and some people working in the town would not be employed in the plant. With that said, individuals traveling to these towns who were not employed in the plant are often employed at one of the businesses that exist because of the shrimp plant.

Though shrimp processing plants are a welcomed source of revenue for municipalities, this revenue is not a gift. Towns provide services to plants, primarily in the form of water services as was mentioned above. Water service is not easy to provide. Old Perlican has a written agreement with Quin-Sea Fisheries to provide water to the plant in the town (Tab 22). The water being provided has to be treated to a proper quality and also available in the proper quantity. According to the agreement, the plant may require up to a maximum of 1.2 million imperial gallons of water a day.

Providing this water is a significant strain on resources because testing and water usage rates have to be constantly monitored. The town's portion of installing the water line was over $330,000 and the provincial government covered the remaining costs. In 2016 to maintain the water line, the town invested more than $250,000 of its own revenue to improve the water line to the plant. If LIFO remains in effect that investment will be for nothing.

As several mayors declared during interviews for this submission, the towns would take all reasonable steps to ensure the success of the shrimp plants because they are recognized as being the heart of the economy of the community. In Twillingate, the shrimp plant was municipal-tax exempt for the first two years of the plant's operation; this included an exemption for paying for water. That was an immediate $200,000 investment from the town. Several towns, including Port-au-Choix and Old Perlican, have faced municipal water crises because the shrimp's plants water usage was affecting the water pressure of other important services and industries, like hospitals, schools, and tourist facilities.

In general, a tax agreement with a shrimp plant is a major investment on the part of a town. Tax agreements usually provide a noticeable tax discount to businesses and are used by towns as an incentive for businesses to remain within a town. Individual tax bills for shrimp plants without tax agreements are private and cannot be disclosed, but it is likely that the plants without a tax agreement are spending significantly more.

What will happen if LIFO is not abolished and most of the province's shrimp plants close? It is difficult to assess the specifics, though by all accounts it will be a very difficult time. If the shrimp plants close, the economies and towns and regions will be destroyed but the towns and regions will not die away quickly. The towns and regions that once benefitted from the shrimp fishery will

likely revert to a state of constant decline, with increased outmigration, lower incomes, and the closure of businesses.

If the plants close, the affected workers will be placed under the care and responsibility of the municipality as part of the Fish Plant Worker Employment Support Program (FPWESP). The municipality under this program will administer “the project” for the affected workers to ensure that they will meet the minimum numbers to qualify for employment insurance while working for minimum wage. This is neither an effective nor long term solution to the problem of the loss of a fish plant.

Municipalities will certainly suffer from the loss of revenue. Every mayor interviewed for this submission noted that some municipal workers – a combination of full-time maintenance people and staff – would likely be laid off if the plant closed and municipal revenue decreased. Mayors also noted with regret that the town would probably have to raise property tax, which they understood would not help the situation but would be necessary. One mayor noted that an increase in property tax in an environment where there was less work was just likely to lead to increased tax delinquency and increase the rate upon which businesses and people left the town. The Mayor of Port-au-Choix noted that the town had many more businesses before the cod moratorium that never returned when the shrimp fishery picked up. She feared that the same would happen if the shrimp fishery was shut down for the inshore.

The Town of Old Perlican had a variety of services and breaks for its residents that the Mayor thought would be difficult to maintain if the shrimp plant shut down. For instance, the town runs a very popular summer program for kids that is open to people from communities all over the region. The town heavily subsidizes the program and charges the same fee regardless of the home community of the child. The program has approximately 150 children and a full-time year round recreation director attached to it. It is a great program but not a core municipal program and the mayor is not confident it could survive in its current form without the shrimp plant revenue. The town has renovated its community centre for social and town events and for the daycare program; it also has a good recreation program for a small community, with plans to develop an outdoor skating rink over the next year or so. These will be difficult to maintain with no shrimp plant revenue.

Shrimp plant revenue is also used to offset some of the rising municipal taxation costs to residents in Old Perlican. With the establishment of the Regional Waste Management system, garbage collection costs doubled for most towns. For Old Perlican, the town absorbed most of the extra cost because it had the revenue to do so from the shrimp plant. The town also offers a residential property tax discount of 10% to those who pay by a certain date. This is a costly discount that is made possible by the revenue of the shrimp plant.

Unfortunately there are examples of municipalities that have already had their shrimp plants shut down because of the cuts resulting from application of the LIFO policy. Jackson’s Arm is a small town located in White Bay on the north east coast of the province. A shrimp plant operated by a company partly owned by Ocean Choice International opened in 2000 and closed in 2010. While it operated, the plant regularly ran three shifts from April to November. The town Councillors and manager interviewed for this submission remember fondly looking out into the bay and seeing a line of shrimp boats waiting to offload at the plant. When the plant was opened

there were four businesses in the community not counting the other fish plant: a gas station, a take out, convenience store, and night club. Now the only business left is a local corner store.

The shrimp plant employed between 120 and 140 people, most from the town and region. It closed in 2010, when the inshore's quota was cut by 28% due to the LIFO policy. Since it has closed, between eight and ten families, many with young children, have permanently left the community in search of work. Because work is a necessity, many people leave for the summer to work at a fish plant in Witless Bay.

When it operated, the plant provided the town with $40,000 in revenue from property and water tax. One long time councillor noted that when the plant was open the town always had money in the bank. Things have changed with no fish plant revenue. The year after the plant closed the town experienced several breaks in its water line. These are expensive to fix, but in the past with the revenue from the shrimp plant the town was able to afford the repairs. Now this was no longer the case. The town did not have the revenue to fix the breaks and had to apply to the provincial government for emergency assistance.

The closure of the shrimp plant created revenue and service problems that were not immediately evident when the plants closed; these problems had to do with the departure of workers to work elsewhere. Like many towns, Jackson's Arm puts off a festival each summer that doubles as a major source of revenue for the town from the sale of food and drink. With the shrimp plant closed and many workers relocating to Witless Bay for the summer, attendance at the summer festival has plummeted. This important source of municipal revenue is now gone.

Like virtually every rural municipality, Jackson's Arm has a volunteer fire department. The fire department, based strictly on numbers, has enough volunteers to function. A volunteer fire department, however, does not often account for when people have to leave to work. A couple of summers ago there was a fire in the town. When the alarm went out to volunteers, only two people showed up; the rest of the fire department was working in Witless Bay.

While no two towns are going to experience the exact same outcomes if a shrimp plant closes, it is likely that the experience of Jackson's Arm is more the rule than the exception. A fishing policy that is focused on tearing down what was built up can only leave destruction in its wake, and that applies to harvesters, plant workers, and municipalities.

A fishery allocation policy needs to be flexible and comprehensive enough to deal with its own consequences. LIFO is blind to consequences. It is focused on reverting the shrimp fishery back to the state it was 20 years ago regardless of all that has transpired in between.

LIFO will Destroy Functional Regional Economies Built around the Shrimp Fishery

While the previous section considered specific communities, the economy of the shrimp fishery expands far beyond the towns in which shrimp plants are located; rather, this economy takes in a wide employment area, landing zones, and supply areas, which form several distinct

functional regions within the province. The Harris Centre of Memorial University has placed the following characteristics of a functional region:

> An important aspect of a functional region is the recognition that all the communities within a region play a role in the local economy. While each employer is located in a specific place, it tends to employ people from a number of other surrounding places. This means that the economic benefits from the firm are distributed over a larger geographic area. In addition, firms in one community may purchase inputs from firms in another community in the same region. This further expands the interaction within the region. While larger centres in a region may have more firms and host more government services than smaller communities, it is important to remember those forms exist mainly because of the aggregate population in the entire region and not just the population in that single community. (See Tab 23)

The shrimp processing plants provide a strong example of how the shrimp fishery has established functional economic regions in rural NL. Figure 15 set outs the number the place of residency of all the people that worked in the Old Perlican plant in 2014. At a community level,

Community	Workers
Adam's Cove	1
Bay de Verde	9
Bay Roberts	3
Black Duck Cove	1
Bonavista	3
Broad Cove	11
Brownsdale	13
Brownsdale	7
Burnt Islands	2
Burnt Point	9
Burnt Point	2
Capelin Cove	10
Carbonear	25
Catalina	1
Change Islands	28
Conception Bay South	2
Cupids	1
Deer Lake	2
Durell	1
Englee	7
Epworth	1
Fortune	1
Grates Cove	6
Grey River	2
Gull Island	19
Hant's Harbour	13
Harbour Breton	4
Harbour Grace	8
Harbour Round	2
Heart's Content	3
Heart's Delight	1
Jackson's Arm	1
Job's Cove	14
Lamaline	8
Lead Cove	4
Little Bay	1
Little Catalina	1
Lower Island Cove	28
Marystown	4

Figure 15

the chart shows that 66 people from Old Perlican worked in the shrimp/crab plant, which is the largest from one town. In addition to this, there are approximately 65 shrimp harvesters in Old

Perlican, a mix of enterprise owners and crew. Therefore, out of a working age population of 425, 31% are directly involved in the shrimp fishery.

A second important point is the impressive number of communities represented in the Old Perlican plant. Residents from 72 different towns and communities are represented, many in the Old Perlican region. Thus the nearby communities of Victoria, Salmon Cove, Winterton, Western Bay Gull Island and Carbonear all provide large numbers of workers to the Old Perlican plant. The loss of the shrimp plant because of LIFO will have tremendous economic impacts all across the Conception Bay North area. As the Mayor of Old Perlican noted in an interview for this submission, “Carbonear is our Gander, and the mall in Carbonear was a pretty dead place during the moratorium before the shrimp fishery came along.”

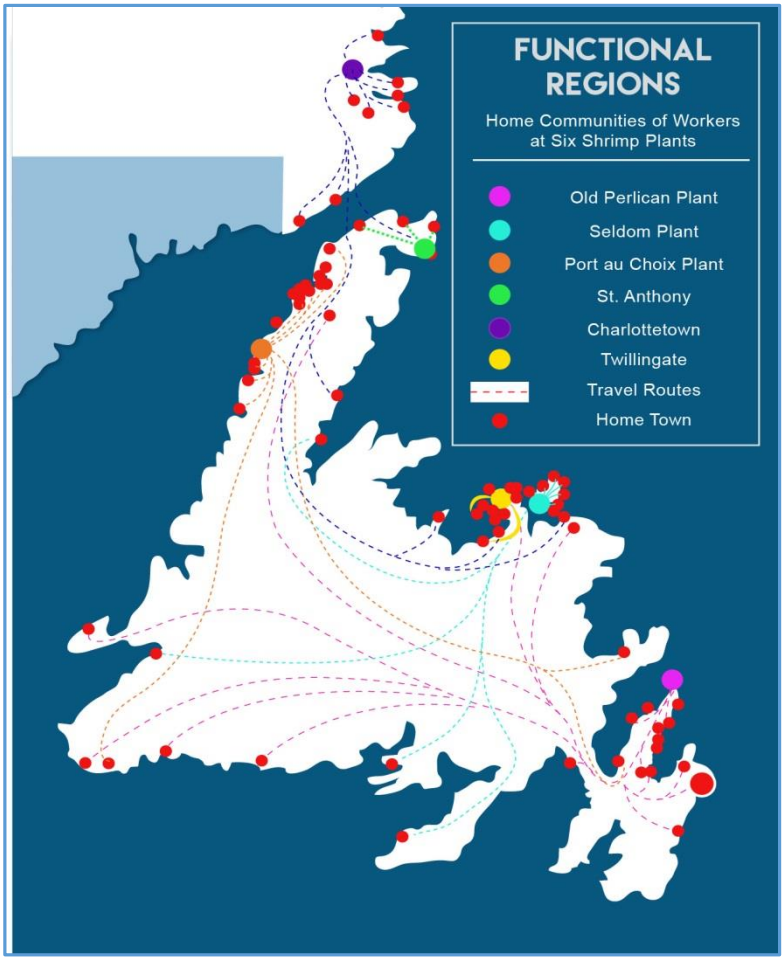
We do not have the numbers for Bay de Verde plant, but it was bigger than the Old Perlican plant and likely pulled in more workers from across the same region.

Drawing plant workers from a wide geographic area is the norm and not the exception in the shrimp fishery. In Port-au-Choix there are workers from 21 communities, in Charlottetown, Labrador the workers come from 14 different communities; the St. Anthony plant has workers from seven different communities (mostly from St. Anthony and Raleigh) and the Twillingate plant has workers from ten communities, most from Twillingate Island and New World Island.

The map below illustrates the near-province wide impact that the shrimp processing sector has in the province. This map does not include plant worker information from the Clarenville, Anchor Point, Black Duck Brook, or Bay de Verde plants. There would be many more dots and lines on the map if this was the case.

New Chelsea	1
New Melbourne	11
New Perlican	6
Northern Bay	13
Northern Bay	2
Ochre Pit Cove	3
Old Perlican	66
Outside the province	3
Paradise	1
Perry's Cove	2
Point May	2
Point-aux-Gaul	2
Port-aux-Basques	4
Portugal Cove	1
Ragged Harbour	2
Ramea	1
Red Head Cove	2
Roddickton	9
Rose Blanche	1
Salmon Cove	20
Shearstown	2
Sibley's Cove	13
Sibley's Cove	6
Small Point	5
South River	4
Southern Harbour	1
St. John's	24
Three Rock Cove	1
Twillingate	2
Victoria	43
Western Bay	23
Winterton	20
Witless Bay	1
Source: DFA's EI Survey 2014	

Figure 16



The shrimp plants are the engines of several functional regions. If they go there will be nothing to take their place.

Shrimp harvesters are also heavily involved in the regional economy. Most harvesters (68%) do not land their shrimp in the same community in which they live, with many traveling a noticeable distance away from home. As Figure 18 shows, more than half of harvesters that do not land at home travel more than 100 kilometres away from home to land, while an additional 31.4% travel between 51 and 100 kilometres away. This movement between areas as part of the transaction of the shrimp fishery are important parts of the regional shrimp economy. Therefore a harvester could land shrimp in Trinity Bay North for the shrimp plant in Clarenville and bring the economic benefit of that activity back Cape Broyle where he/she lives. In the meantime, the shrimp landed in Trinity Bay North helps provide work to people at the wharf, it provides work to the trucker who transports it to the plant, and it supports the work of the hundred or so workers at the Clarenville shrimp plant.

Figure 17 shows 2014 inshore shrimp landings for both SFA 6 and SFA 7. The wide dispersal provides an indication of the broad impact of the shrimp fishery on the province. There are several major shrimp landing areas on the northeast coast of the Island and the Northern Peninsula that are not shrimp plants. The shrimp fishery weaves its way through dozens and dozens of coastal communities.

As shrimp is moved into communities, so is the revenue connected to that fishery. We have already discussed the revenue of harvesters, plant workers

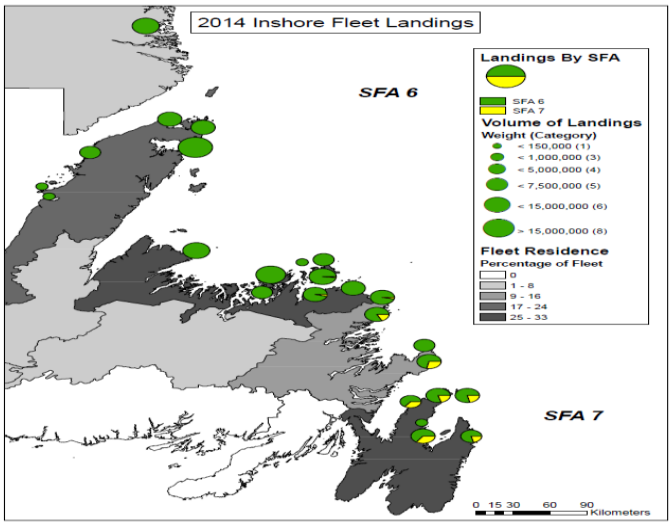


Figure 17

and municipalities, but the revenue from the shrimp fishery moves well beyond that. Many millions of dollars are spent each year servicing, maintaining, provisioning, and equipping vessels. The cost to replace a full hydraulic system is in excess of $400,000 and requires 600 hours of labour to install. This is not an unusual piece of maintenance for the shrimp vessels and at least one vessel is currently undergoing a hydraulic refit. The current cost to replace all of the requirements of gearing up is greater than $700,000.

The important point here is not the cost of repairs, but the fact that the repairs are all done in the province and provide a substantial amount of work. Whereas offshore repairs are often done outside of the province or the country, inshore repairs are all done locally. We do not know the exact amount spent each year at local shipyards, but we can make a reasonable estimate based on a 2014 survey of harvesters. We estimate that the inshore fleet spends between $10,000 and $30,000 per year at shipyards (this is a wide range but there is a wide range to the costs of repairs). This means that inshore harvesters spend between $2.5 million and $7.5 million each year just on repairs.

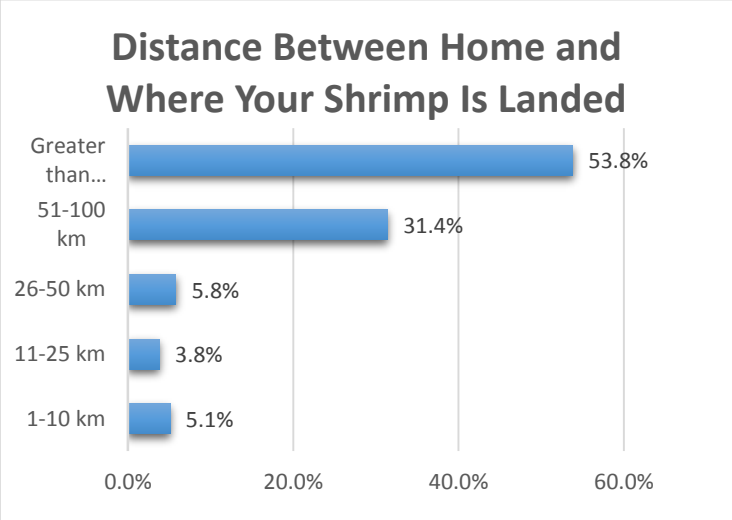


Figure 18

This amount keeps a lot of non-harvesters in work. Two of the primary inshore shipyards are located in Glovertown and Port Saunders. The Glovertown Shipyard is a major employer in Glovertown with 30 employees. We are not certain of its revenue levels but it has existed for many years and pays $8,000 in property taxes to the town. Another important inshore shipyard is the Northern Boat Repair in Port Saunders. That company employs approximately 20 people and has revenue of approximately $2 million per year. The company also pays approximately $9,000 in municipal taxes. LIFO threatens the shipyard industry in the province and the many jobs that go along with it. To lose any shipyard would be a terrible blow to the local and regional economy.

Figure 19 further sets out other expenditures that shrimp harvesters incur in pursuit of their fishery. All of these expenditures are made locally and add to the overall value of the inshore shrimp fishery to communities and regions.

Port	Landings (#)	Groceries	Maintenance	Fuel	Total
St. Anthony	330	$264,000	$165,000	$2,037,750	$2,466,750
Charlottetown	155	$124,000	$77,500	$957,125	$1,158,625
Twillingate	147	$117,600	$73,500	$907,725	$1,098,825
Seldom	108	$86,400	$54,000	$666,900	$807,300
LaScie	102	$81,600	$51,000	$629,850	$762,450
St. Lunaire	75	$60,000	$37,500	$463,125	$560,625
Old Perlican	69	$55,200	$34,500	$426,075	$515,775
Carmanville	59	$47,200	$29,500	$364,325	$441,025
Bay de Verde	56	$44,800	$28,000	$345,800	$418,600
Valleyfield	51	$40,800	$25,500	$314,925	$381,225
Port de Grave	49	$39,200	$24,500	$302,575	$366,275
Cook's Harbour	42	$33,600	$21,000	$259,350	$313,950
Catalina	36	$28,800	$18,000	$222,300	$269,100
Musgrave Harbour	24	$19,200	$12,000	$148,200	$179,400
Lumsden	23	$18,400	$11,500	$142,025	$171,925
St. John's	16	$12,800	$8,000	$98,800	$119,600
Bridgeport	12	$9,600	$6,000	$74,100	$89,700
Bonavista	8	$6,400	$4,000	$49,400	$59,800
Joe Batt's Arm	6	$4,800	$3,000	$37,050	$44,850
Black Duck Cove	4	$3,200	$2,000	$24,700	$29,900
Hant's Hr	3	$2,400	$1,500	$18,525	$22,425
Port Saunders	3	$2,400	$1,500	$18,525	$22,425
Fogo	2	$1,600	$1,000	$12,350	$14,950
Port au Choix	2	$1,600	$1,000	$12,350	$14,950
Harbour Grace	1	$800	$500	$6,175	$7,475
Total Expenditures	**1383**	**$1,106,400**	**$691,500**	**$9,231,525**	**$11,029,425**

Figure 19

The results of the table come from extrapolated information provided during a random stratified survey of harvesters in 2014. The average costs associated with each trip for a shrimp vessel were applied to each individual harvester landing in 2014 and attributed to the place where the landing was made. As the place with the most landings, St. Anthony benefits the most from the costs associated with conducting the inshore shrimp fishery, with almost $2.5 million added each year to the local economy.

We know that the local expenditures by the shrimp fleet make a difference. The owner of a local store in Old Perlican stated in an interview in 2015 that the grocery purchases by the local shrimp fleet allow him to keep an extra employee; if those purchases stop, an employee would have to be laid off.

On a macro level, the positive impact on regions of the inshore northern shrimp fishery can be assessed by revisiting the economic zones discussed at the beginning of this section. As was explained at the beginning of this section these five zones were in a state of severe economic and demographic decline. Unlike the approach at the beginning of this section, all economic zones will be assessed together as the progress is similar in each.

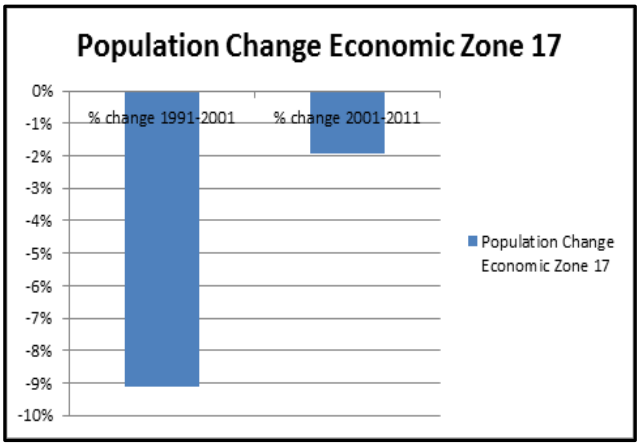


Figure 20

The five zones examined capture 9 of the 10 shrimp plants (Clarenville excluded). In total, these zones contain between 2,000 and 2,500 shrimp harvesters and plant workers, which makes up between 3.1% and 3.8% of all working age people in these regions. To put this in perspective, there are approximately 2,200 health care workers in these combined 5 zones and 2,000 education system workers. The fishery would be the largest private-sector employer in these regions.

Economic zone 6 has two shrimp plants – Anchor Point and St. Anthony – and a sizable shrimp fleet that has access to SFA 6 and SFA 8. The introduction of the northern shrimp fishery in this zone appears to have had a relatively quick impact. Whereas the median income was completely flat between 1991 and 1997, starting in 1998 there was a noticeable and steady increase. In 1998 the median income in the region increased by 3%, the first increase in 6 years. Over the following 6 years, up to 2004, the median income increased a further 17.1%.

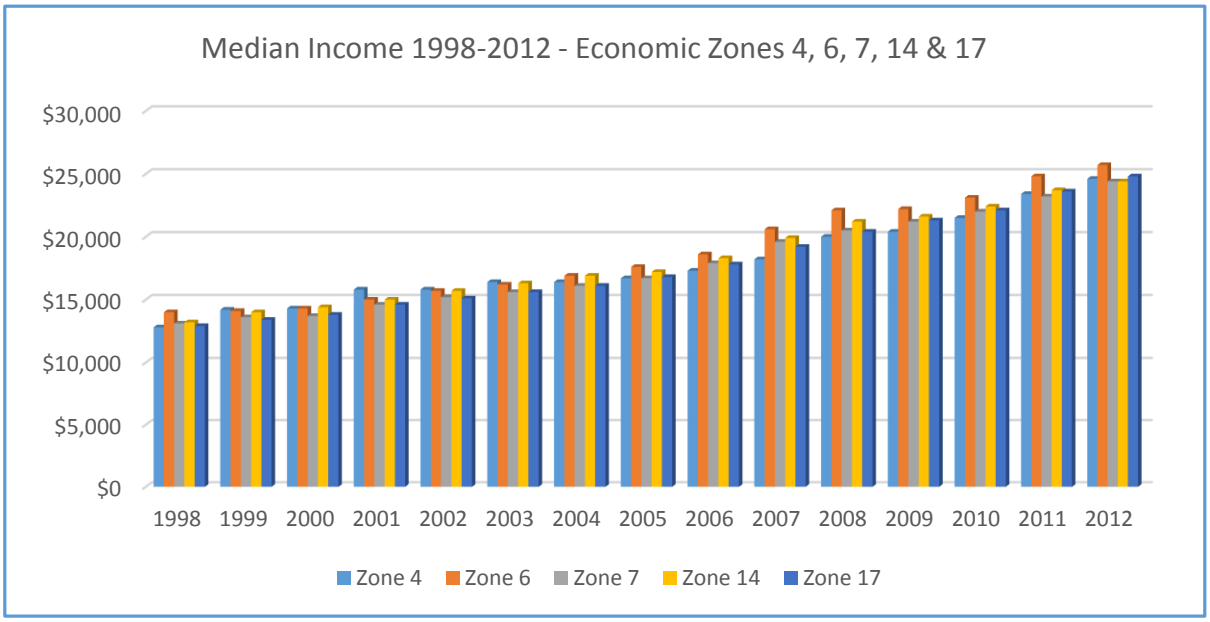


Figure 21

A similar quick increase was experienced in zone 7. Zone 7 has two shrimp plants – Port –au-Choix and Black Duck Brook and a large inshore shrimp fleet that harvests in SFA 6 and SFA 8. Between 1992 and 1997 the median income in that zone was in steady decline. In 1998 the people of the region experienced the first median income growth in several years and by 2004 the median income had increased by 25%. This growth in income was also experienced across the Labrador Straits in economic zone 4. In 2001 the Labrador Fishermen`s Union Shrimp Company built a shrimp plant in Charlottetown and the area has a sizeable shrimp fleet. Between 1992 and 1997 the zone experienced a small increase in median income of 5%. The rate of income growth was much faster after 1997. From 1998 to 2004, the median income grew by 28%. The biggest year-over-year growth occurred between 2000 and 2001, when the shrimp plant opened. In that one year incomes grew by 10.5% percent. Income growth and the creation of the shrimp plant in the region did not occur by coincidence.

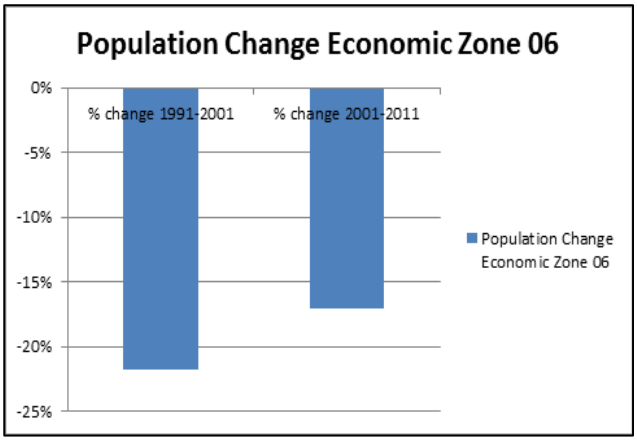


Figure 22

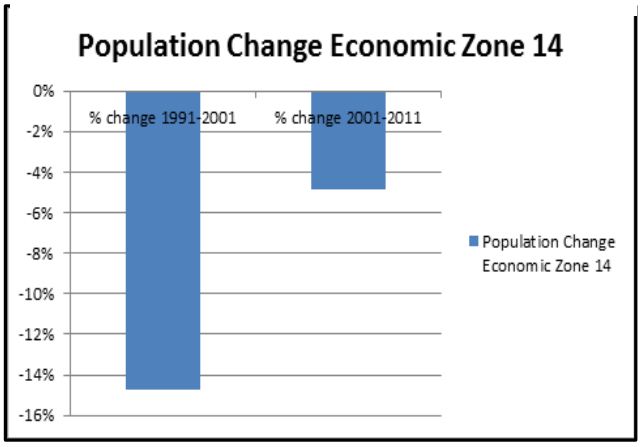


Figure 23

Zone 17 in Central NL also experienced median income growth in the year immediately following the inshore's entrance into the northern shrimp fishery. This zone has two shrimp plants - Twillingate and Fogo Island – and a very large shrimp fleet. Between 1992 and 1997 the median income in the zone declined, which was reflected in a harsh wave of outmigration. From 1998 on, however, incomes increased at a steady pace. Between 1998 and 2004 the median income in the area grew by 28%, reversing the trend of the previous 6 years when incomes declined by 2%. In zone 17 on the Avalon Peninsula, incomes also rebounded as the inshore started fishing northern shrimp. Zone 17 has shrimp plants in Old Perlican and Bay de Verde and is home to most of the 3L shrimp fleet. Between 1992 and 1997, the median income in the area grew a little, by $600 from $11,900 to $12,500. Between 1998 and 2004, median income grew by 20%.

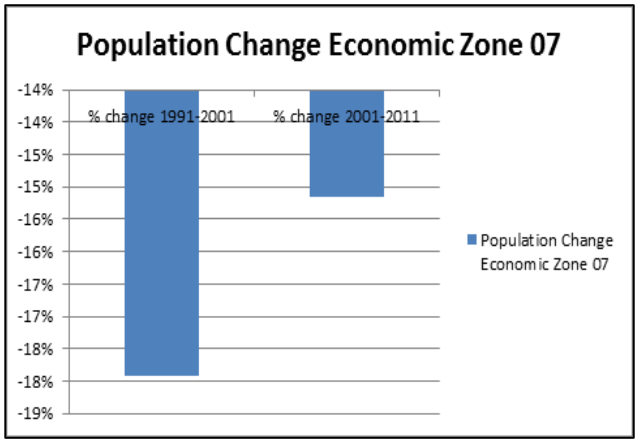


Figure 24

The shrimp fishery certainly played an important role in the explosion of incomes

that occurred between 2004 and 2012 in many parts of the province. While there were other contributing factors to income growth during the boom years in NL, the shrimp income information provided earlier in this section shows that the shrimp fishery certainly contributed to local income growth.

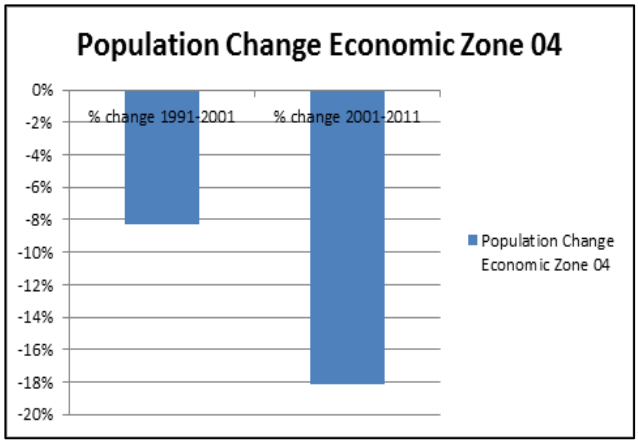


Figure 25

The economic growth spurred by the shrimp fishery has impacted the rate of population decline in 4 of the 5 zones, though it has not succeeded in totally stemming the tide of departures. As Figure 23 and Figure 20 show population declined slowed dramatically in zones 14 and 17 once the shrimp fishery became established in the region. Population decline also slowed in zones 6 and 7, (see Figure 22 and Figure 24) though not to the same extent as other area. In zone 4, the population decline has increased since the opening of the shrimp fishery.

The failure to substantially stem population decline on the Northern Peninsula and the coast of Labrador is not an indictment on the shrimp fishery. These areas have relatively small populations (particularly zone 4) and the decline of young people in these zones after the moratorium left a huge impact that will continue to be felt over time. These regions need to attract new residents for long term sustainability. Certainly that will be impossible if LIFO forces the closure of the inshore shrimp fishery and the biggest employer and source of local revenue is destroyed.

LIFO is Contrary to the Policies of the Federal Government

In its 2016 federal budget, entitled “Growing the Middle Class,” the Government of Canada stated:

> *The need for more inclusive growth is not new. It has long been understood that a strong economy starts with a strong middle class. When middle class Canadians have more money to save, invest, and grow the economy, everyone benefits.*
>
> *When middle class Canadians have confidence in their disposable income, consumer demand is strong and businesses have the confidence to invest (Tab 24).*

The inshore shrimp harvesters and plant workers constitute a large portion of the middle class of rural NL. As was discussed earlier, these are the individuals with the disposable income and consumer demand that support businesses in both rural and urban areas.

LIFO is absolutely ignorant of the incomes of the people who will lose their livelihoods if the policy is maintained. LIFO is a crude, disruptive approach masquerading as a policy. It is also a mechanism for inequality. LIFO destroys thousands of good jobs so that the corporate owners

of the offshore licenses and fleet can maintain a certain profit margin. LIFO is not about saving offshore jobs because they are not imperiled, it is only about protecting profits.

This sledgehammer approach to finding a solution is not how the current federal government approaches problems. For example it changed the child care benefit from a one-size-fits-all approach to one that adjusted with family income. With taxation policy, it has chosen to lessen the middle class tax burden in favour of a slight increase for the more wealthy. This is progressive and it is good for our economy.

It is difficult to understand how the federal government could support a LIFO policy that destroys the middle class jobs that the Trudeau government is trying to protect.

Section 2: What key considerations should inform any decision to continue, modify, or abolish LIFO?

FFAW-Unifor submits that LIFO should be abolished and management decisions on northern shrimp should be based on the following key considerations:

1) Adjacency must be the key consideration in fisheries access and allocation;
2) LIFO contradicts the values of fisheries policy and therefore cannot be considered policy but is rather a convoluted, rigid concept; and
3) Policy must be fluid to reflect the realities and values of the socioeconomic environment.

The Principle of Adjacency

The principle of adjacency is a longstanding, internationally-recognized component of natural resource management. Adjacency has long been threaded throughout key pieces of legislation that have shaped responsible, socially-sustainable fisheries management policy on international, national and local levels. Adjacency is one of the key pillars upon which self-sustaining, economically viable rural communities have been built.

The definition of "adjacency" for Atlantic Canadian fisheries resource management was set by the Independent panel (2002) on Access Criteria and later adopted by Fisheries and Oceans. This definition holds as follows:

> *The adjacency criterion requires that priority of access should be granted to those who are closest to the fishery resource in question. The adjacency criterion is based on the explicit premise that those coastal fishing communities and fishers in closest proximity to a given fishery should gain the greatest benefit from it, and on the implicit assumption that access based on adjacency will promote values of local stewardship and local economic development (Tab 25).*

Recognition of the importance of adjacency dates back to the birth of many legal systems, including English Common Law. Adjacency is a longstanding cornerstone of responsible fisheries management, and the importance of the principle can be traced through key decision-making periods in the evolution of fisheries resource management. Adjacency is present in international fisheries management; in declaring the responsibilities of nation states; and, in decisions around local resources, such as those off of Newfoundland and Labrador.

Internationally, adjacency was the key principle upon which the United Nations built its argument for the declaration of Exclusive Economic Zones (EEZ). Within an EEZ, adjacency was then recognized as coastal nation-states obtaining "recognition of exclusive, first-order access right and management authority with respect to the ocean tracts and sea floor EEZs abutting their coastlines" (Tab 26).

At the 1973 United Nations Convention on the Law of the Sea (UNCLOS) adjacency was a key element in the development and maintenance of EEZs and how nation states manage the resources within them. Nation states were troubled by the lack of benefit flowing to coastal

regions from the resources along their adjacent shores, a deficiency which was justified on the basis of "freedom of the high seas." Subsequently, the Law of the Sea Treaty, of which Canada has been a signatory since 1982, was ratified and mentions specifically that the people of coastal communities have a socioeconomic reliance on the resources directly off their shores given that they have a history of dependence and continuous use of these resources. Article 61 of UNCLOS regarding conservation of living resources of the ocean, states that conserving and protecting marine resources should

> *Also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities…and taking into account fishing patterns (emphasis added), the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global (*Tab 27*).*

It is noteworthy that at UNCLOS III Canada was the leading advocate for control of fishery resources within an EEZ. Canada achieved this goal by declaring the 200 mile limit in 1977. The Canadian government's decision was driven by the desperate plight of those coastal communities that sat adjacent to and had traditionally relied upon the northern cod resource in NAFO divisions 2J3KL, which was being heavily fished by outside interests (Blackwood 1996). The Canadian perspective and experience was key for driving home at the UN the importance of ensuring that the maximum benefit of resources flowed to adjacent communities and people when allocating access to fisheries resources.

The UN further embedded the importance of adjacency in international law in the 1992 Rio Declaration from the Conference on Environment and Development. Agenda 21 – an action plan targeted toward sustainable development that Canada supported – insists in Chapter 17 that nation-states must weigh the needs, knowledge and interests of coastal communities, indigenous populations, fish workers and the small-scale fisheries on which they rely when developing and implementing management regimes to protect the ocean's resources. The steps laid out in Agenda 21 follow International Law:

> *… as reflected in the provisions of the United Nations Convention on the Law of the Sea…[which] sets forth rights and obligations of States and provides the international basis upon which to pursue protection and sustainable development of the marine and coastal environment and its resources (*Tab 28*).*

Regarding sustainable use and conservation of marine living resources under national jurisdiction, Agenda 21 states:

> 17.73. Coastal States, particularly developing countries and *States whose economies are overwhelmingly dependent on the exploitation of the marine living resources of their exclusive economic zones (emphasis added)*, should obtain the full social and economic benefits from sustainable utilization of marine living resources within their exclusive economic zones and other areas under national jurisdiction.
>
> 17.74. States commit themselves to the conservation and sustainable use of marine living resources under national jurisdiction. To this end, it is necessary to:

> a) Develop and increase the potential of marine living resources to meet human nutritional needs, *as well as social, economic and development goals (emphasis added)*;
>
> b) Take into account traditional knowledge and interests *of local communities, small-scale artisanal fisheries and indigenous people (emphasis added)* in the development and management programmes

Regarding management, Agenda 21 states:

> 17.77. States should ensure that marine living resources of the exclusive economic zone and other areas under national jurisdiction are conserved and managed in accordance with the provisions of the United Nations Convention on the Law of the Sea
>
> 17.79. Coastal States, individually or through bilateral and/or multilateral cooperation and with the support, as appropriate of international organizations, whether subregional, regional or global, should inter alia:
>
> b) Implement strategies for the sustainable use of marine living resources, *taking into account the special needs and interests of small-scale artisanal fisheries, local communities and indigenous people to meet human and other development needs (emphasis added)*

Further, the *Code of Conduct for Responsible Fisheries* (1995) (Tab 29) developed by the Food and Agriculture Organization of the United Nations (FAO), of which Canada has been a member nation since 16 October 1945, states in section 7.1.1 that:

> States and all those engaged in fisheries management should, through an appropriate policy, legal and institutional framework, adopt measures for the longterm conservation and sustainable use of fisheries resources. Conservation and management measures, whether at local, national, subregional or regional levels, should be based on the best scientific evidence available and be designed to ensure the long-term sustainability of fishery resources at levels which promote the objective of their optimum utilization and maintain their availability for present and future generations; short-term considerations should not compromise these objectives.

Regarding the management of jurisdictional resources, the Code states:

> 7.6.6. When deciding on the use, conservation and management of fisheries resources, *due recognition should be given, as appropriate, in accordance to national laws and regulations, to the traditional practices, needs and interests of indigenous people and local fishing communities which are highly dependent on fishery resources for their livelihood (emphasis added).*

Further,

> 6.18. Recognizing the important contributions of artisanal and small-scale fisheries to employment, income and food security, States should appropriately protect the rights of fishers and fishworkers, particularly those engaged in

> subsistence, small-scale and artisanal fisheries, to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction.

Canada was, and remains, a strong, formal supporter of the UN's position on the importance of adjacency, and the protection of the livelihoods of coastal fishing communities in fisheries management decisions (Tab 28; Tab 30). Canadian policy makers have long committed to adhering to principles developed at UNCLOS III and written in the Rio Declaration, including adjacency, by both being a signatory to international agreements and in the making of local fisheries management policy.

Adjacency has been a key cornerstone in Canadian Integrated Fisheries Management Plans (IFMPs) for some of the most valuable commercial species. In Atlantic Canada's snow crab fishery, for example, the IFMPs for Area 19 (2001-2010), located just east of the Magdalen Islands, clearly state that the socioeconomic objectives in the management of the fishery are, in stated order:

- To facilitate an orderly and productive fishery through maximizing harmony within the industry and *adjacent communities* (emphasis added)
- To provide the fishermen with increased opportunities to develop long-term business plans
- To provide the development and use of good fishing practices

Adjacency has also had a long history in the Groundfish management plans. The 1986-1990 IFMP stated that, "Allocations of fishery resources will be on the basis of equity taking into account *adjacency to the resource, the relative dependence of the coastal communities and the various fleet sectors upon a given resource, and the economic efficiency and fleet mobility* (emphasis added) (Tab 31).

The Wavering Canadian Commitment to Adjacency

Though often identified as a pillar of responsible fisheries management, the importance of adjacency and other socio-economic considerations have been consistently eroded by DFO. The manner in which adjacency is described in the groundfish management plan provides a useful example of this gradual change.

In the 1980s, adjacency was one of the "Principles of Allocation", which is strong language that was given significant weight as it marked adjacency as a key guidepost. By the 1993 groundfish IFMP, the "Principles" were demoted to "Essential Elements," which implied that adjacency was an important consideration but not a goal by which groundfish resources should be guided. By 1995, adjacency and other socio-economic pillars were demoted to merely "Guidelines" (Blackwood 1996), suggesting that they were no longer seen as vital to the survival of those dependent on fisheries resources but were simply friendly reminders.

Interestingly, by the time the "Principle" of adjacency had been downgraded to a "Guideline" in 1995, the entire approach to resource allocation had changed. A special clause was added to the 1995 groundfish IFMP that had a decidedly pro-offshore slant. This clause states:

XII. Adjustments in the inshore/offshore ratios for particular stocks may be considered by the minister

In direct, concrete language, DFO had declared that fisheries allocation issues were no longer weighted towards sustainable, economically viable coastal communities; instead it was now a matter of inshore versus offshore, driving a wedge between the two sectors. In doing so, DFO created a dichotomy in which power struggles and influence have emerged as perceived factors in resource management. This has been to the detriment of the inshore sector.

LIFO is both an attack on adjacency and a departure from a past commitment to adjacency. LIFO exists to protect the offshore fleet, which does not abide by the principles of adjacency. Ironically, the offshore had no difficulty supporting adjacency when it was the sole fleet harvesting shrimp and faced no competition. For example, these were the four basic principles within the 1990 northern shrimp IFMP:

1. Optimum exploitation of all northern shrimp stocks with due regard to effective resource conservation and orderly long-term development of the entire northern shrimp fishery
2. Fair access to, and equitable sharing of, the northern shrimp resources by all legitimate Canadian user groups, with particular emphasis on the needs of the people and communities most adjacent to the resource
3. Canadianization of all aspects of the northern shrimp fishery, harvesting, processing and marketing – so the maximum benefit from this fishery accrues to Canadian user groups
4. Development of a modern commercially viable, and self-sustaining northern shrimp fishery

There is nothing wrong with these four principles and they adequately reflect the inshore's interpretation of adjacency. These principles should remain key concepts of what the fishery for northern shrimp looks like.

But adjacency is clearly a fair-weather issue for the offshore. Once the inshore was granted access, the commitment to adjacency was qualified and limited by the quota and SFA-specific thresholds that were given more importance than adjacency. In the 2007 IFMP, point 4 as listed above was modified to add "with particular emphasis on the needs of the traditional license holders." As is made clear throughout the IFMP, the term "traditional license holders" referred to the offshore sector.

Such qualifications or limitations on adjacency are essentially a refutation of the adjacency principle. Support for coastal communities and people who depend upon a resource cannot be limited to a particular threshold – adjacency is an ongoing commitment, it does not have a beginning and end point. Limiting and downgrading the importance of adjacency is actually cruel, because when adjacency is applied it is giving hope and encouraging investment. The consequences of eliminating hope and investment are quite high.

LIFO Contradicts the Values of Fisheries Management and is Not a Policy

A policy is not granted legitimacy by the mere fact that it is written and included in a document. A policy has to be held to a higher standard; it has to be tied to an attempt to forward a general principle or guideline and it has to explain the benefit of its end goal. A policy can be about contraction – fleet rationalization, as an example – but a policy on contraction must further a greater benefit.

There are several ways in which LIFO fails to meet the standard of a policy, the two most obvious is that it contradicts existing DFO principles and guidelines and it does not explain the value of its purpose. LIFO assumes an air of legitimacy due to its placement in two IFMPs, but LIFO is not attached to a standing DFO guiding principle, nor does it state a benefit as its end goal. LIFO is an intention, it is not a policy and should not be given the deference that a policy deserves.

Objectives of Responsible Fisheries Policy

Over the last half of the century, policy makers have dealt with questions surrounding how to best regulate access and allocations to natural resources. After decades of debate in the fishery around the "tragedy of the commons,"[7] what was once seen as a common property resource has been regulated by state policy in an attempt to ensure conservation, sustainability and economic viability. Indeed, modern fisheries policy has given increased attention to trying to find ways to enhance the livelihoods of those dependent on the resource and correct past decisions that have often led to resource degradation, marginalization, and supressed economies for fisheries-dependent communities.

This is why, like many other nations, Canada spent much of the late 1990s and early 2000s investing resources into examining a variety of fishery issues such as capacity, economics, and resource productivity. The goal of these exercises was to decide on best practices and management regimes to move the industry forward. During these years there were several policies, such as the Atlantic Fisheries Policy Review, the Independent Panel on Access Criteria, and the Preserving the Independence of the Inshore Fleet in Canada's Atlantic Fisheries (PIIFCAF), that made recommendations to protect various community interests in the fishery. The recommendations and direction given by such reviews have helped shape the goals of fisheries policy in Canada and have laid out what responsible, sustainable fisheries policy should achieve.

Canadian fisheries policy is guided under the Government of Canada's wider objectives, which take into account the economic and social wellbeing of the nation. Economic objectives focus on improving employment opportunities, contributing to the economy and hitting targets for growth.

[7] See Gordon 1954 and Hardin 1968.

As pointed out in the Atlantic Fisheries Policy Review discussion document (2001), the application of these goals to the fishing industry translates into:

- Spurring economic growth, job creation and the new economy;
- Promote competition, efficiency and innovation;
- Enhance international competitiveness, in light of economic globalization; and,
- Produce a net benefit for the Canadian economy (Tab 32)
-

For rural Canadian regions, specifically, the vision of the economic and social well-being of the nation is centred around:

- Vibrant communities and a sustainable resource base contributing to our national identity and prosperity;
- Citizens making informed decisions about their own futures; and
- Canadians sharing the benefits of the global knowledge-based economy and taking full advantage of opportunities for personal gain and sustainable community development (AFPR).

DFO's responsibility in creating policy that is both socially and economically responsible is not new, and while it is acknowledged that "the Department cannot create prosperity, it *can* create a policy framework that enables the fishing industry to contribute optimally to the national economic and to the economic viability and self-reliance of individual fishing enterprises" (AFPR).

PIIFCAF provides a good example of a policy that adheres to the overall purpose of the Atlantic Fisheries Policy Review. PIIFCAF is aligned with the AFPR, but it also provides reason for its existence and the goal it hopes to achieve. PIIFCAF starts with a policy statement, which immediately explains why it is being implemented:

> *The Policy on Preserving the Independence of the Inshore Fleet in Canada's Atlantic Fisheries (PIIFCAF) promotes a commercial fishery in Atlantic Canada with a strong independent inshore sector. The Policy includes a comprehensive approach to assist fish harvesters to retain control of their enterprises, enhance access to capital from traditional lending institutions and maintain the wealth generated from fish harvesting in coastal communities. (Tab 33)*

Later in the policy statement, further statements are made to clarify the policy by setting forth objectives that are in line with the AFPR. Therefore:

> The PIIFCAF Policy strengthens the Owner-Operator and Fleet Separation policies by addressing issues concerning Controlling Agreements and ensures that those who are benefiting from the privilege of the licence are those who are actively engaged in the fishery and the consultative process.
>
> The objectives of this Policy are to:
>
> - reaffirm the importance of maintaining an independent and economically viable inshore fleet;
> - strengthen the application of the Owner-Operator and Fleet Separation policies;

- ensure that the benefits of fishing licences flow to the fish harvester and the coastal community; and
- assist fish harvesters to retain control of their fishing enterprises.

PIIFCAF has a clear objective and purpose and can rightfully be called a policy. LIFO lacks those fundamental purposes and thus is not a policy.

LIFO Contradicts Existing Policies

FFAW-Unifor submits that LIFO is not a policy as it is incompatible with the guiding social and economic principles of resource allocation in Canada. LIFO is not a policy – it is nothing more than a means to exclude others for no social or inclusive economic reason.

Long-term goals in Canadian fisheries management have been shaped by the country's longstanding commitment to economic development and social sustainability. LIFO contradicts this process and does not achieve, nor does it create a road to, an economic development or social sustainability goal. A comparison of LIFO to the goals of the AFPR clearly shows this to be the case.

- LIFO and Spurring Economic Growth, Job Creation and the new economy

  With respect to economic growth, there has never been a study produced that shows that LIFO is the best option for optimizing economic growth in a declining resource. The government of Newfoundland and Labrador, in both its powerpoint presentation and full study on the economic impacts of LIFO, show that the application of LIFO would be most harmful to the GDP of the province. (Tab 34)

  As for job creation, LIFO does not create more jobs, it actually eliminates more than half of the current workforce in the northern shrimp fishery and many more indirect jobs. LIFO clearly contradicts the DFO policy of spurring economic growth and job creation around the fishery.

- LIFO and Promoting Competition, Efficiency, and Innovation

  LIFO eliminates competition because it serves to protect the offshore fleet which does not operate a competitive fishery. The offshore fleet does not operate with any requirements for efficiency nor has it been subject to rationalization. The offshore fleet functions based on a very old business model – the year round fishery – with no consideration of whether that is efficient or innovative. They are a fleet based on a business model that has not been subject to scrutiny.

- LIFO and Enhanced International Competitiveness

  LIFO will not enhance international competitiveness. LIFO will eliminate the inshore shrimp fleet by reducing the inshore quota to an unsustainable level. The inshore fleet

makes a high quality product, which is processed in the province and exported around the world. It is difficult to understand how international competitiveness is enhanced by eliminating an inshore shrimp sector that is well established in international markets.

- LIFO and Producing a Net Benefit for the Canadian Economy

  If LIFO is maintained, it will likely lead to a contraction of the Newfoundland and Labrador economy, which in turn damages the Canadian economy. As noted above, the Government of NL has noted that LIFO will have the greatest negative effect on important economic indicators, such as employment income and GDP. There has been no evidence presented to show that LIFO will provide a net economic benefit for the remainder of Canada.

LIFO also contradicts other DFO policies. PIIFCAF exists to maintain an independent and economically viable inshore fleet but LIFO will specifically undermine this goal by challenging the viability of a large portion of the NL inshore fleet. While juggling competing interests of competing policies is a challenge, policies within a government department generally do not contradict each other as they are guided by overall goals. As LIFO is not aligned with other DFO goals, it is more likely to contradict existing policy.

The fact that LIFO is not a policy is also clear from its presence in both the 2003 and 2007 IFMPs. In both IFMP, LIFO is mentioned in the last part of paragraphs in a sentence such as "…participants will be removed from the fishery in reverse order of gaining access, last in, first out (LIFO)." There is no statement that LIFO will achieve this for the economy or that for the benefit of the fishery. In business, where the term LIFO originates, it is not a policy, it is an approach for managing inventory. In the fishery, LIFO also manages inventory, though now the inventory is human beings who own, operate, and work on fishing vessels and in fish plants.

For LIFO to be maintained as a policy, DFO must honestly describe what they want a LIFO *policy* to achieve and why achieving those goals would be a desired result. Absent this description, LIFO can be considered as merely a tool to support the real policy, which is a DFO preference for the offshore fleet.

Policies Must be Fluid to Reflect Changing Economic Circumstances and Societal Values

Under the Fisheries Act, the Minister of Fisheries and Oceans has the discretion to make decisions regarding access to fisheries and the allocations that follow. The Minister can also make decisions on new or existing sharing arrangements that lay out the process by which allocations are shared among users. The discretionary power of the Minister to make access and allocation decisions is not restricted by the decisions of previous Ministers of Fisheries and Oceans. Ministerial discretion is an important consideration in this review as it highlights the need for fishery policies to be fluid and adapt to the dynamic environments, both physical and social, against which these policies are applied.

Adapting and adjusting policies is necessary as circumstances change on a regular basis. That is a fact. Over the past several decades DFO has altered its focus and has changed policies to reflect these changes. This is a brief review of the overarching changes in focus and policy at DFO since the 1970s; clearly policies have changed to accommodate changes in direction by the department:

- In the 1970s policy focused on declaring the 200-mile zone and Canada acquiring management responsibility for its adjacent waters;

- The 1980s brought policy focused on expanding capacity in both the harvesting and processing sectors, as well as creating regulatory systems to handle the vast resources now under Canadian jurisdiction;

- Policy in the 1990s addressed the rapidly-approaching issues of stock collapses, coupled with cuts in resources to government, as well as new fisheries policies to accommodate Aboriginal fishing rights. Reductions in fishing enterprises through license retirement programs, addressing fishing practices by improving technologies for by-catch, and retraining programs for fish harvesters were all initiatives from this period. New licensing policy, the *Oceans Act*, and the beginnings of a move toward co-management were all policy moves of this era; and

- The 2000s have once again been a time of transition due to market fluctuations and resource challenges. Fisheries policies are said to now be shaped with goals of creating conditions that allow individual harvesters to become more economically self-reliant, as well as moving away from top-down management and toward a system of co-management (AFPR).

Indeed, adaptation of policy has been necessary within fisheries for specific species, and northern shrimp is a perfect example of this process. A lot has changed since 1997 when the seeds of LIFO were first inserted into the northern shrimp IFMP. The DFO policy of favouring the offshore needs to be changed to account for this.

Making such changes to support the circumstances of the inshore fleet is certainly not without precedent. For 20 years before the inshore entered, the offshore northern shrimp sector regularly benefitted from policy changes to suit the particular circumstances that challenged that sector.

Adaptations of Policy to Assist the Offshore Sector

The offshore northern shrimp fleet that developed in 1977-1978 were bound by many policies, two of which were key for Newfoundland and Labrador, and Canada:

- Support underutilized processing capacity in NL; and
- Canadianize the shrimp fishing industry and ensure the benefits from the resource stayed domestic.

Over the ensuing years, the offshore shrimp fishery would lobby hard to change or modify these policies to suit the economic needs of the offshore fleet.

In the late 1970s, priorities were set for who could gain access to the northern shrimp resource. The following order was set:

- Canadians active in 1977;
- Individual fishers if possible;
- Fish cooperatives (with processing/processing capacity); and,
- Corporations posing the capacity to process shrimp.

By February 1978 approximately 50 applications had been received for licenses from both individual fish harvesters and processors to fish shrimp off Labrador. Approximately 40 percent of applications were from Newfoundland and Labrador (including individual, inshore harvesters), while 40 percent were from the Maritimes and the majority of the remaining 20 percent were from Quebec. Eleven licenses were issued: five to residents of Newfoundland and Labrador, two to Quebec, and four to residents of the Maritimes. (Tab 35)

As an aside, none of the licenses were issued to individual fish harvesters, most likely due to a lack of capacity to harvest shrimp. Nonetheless, there was an important inshore presence in the issuing of the first shrimp licenses in the form of the Labrador Fishermen's Union Shrimp Company, which was created by offshore harvesters for the purpose of getting access to the shrimp fishery. This is discussed more in the section on Question 3.

In 1978 four foreign vessels were chartered to harvest northern shrimp, and three domestic vessels (two freezer trawlers and one wetfish trawler). There were, however, requirements put in place for these early licences:

- Those chartering foreign vessels were advised that they must purchase a vessel for the domestic harvesting of northern shrimp by September 1979;
- Those licensees who were inactive in 1978 were given until September 1, 1980 to operate a vessel within the fishery;
- Licensees were required initially to land and process at least 50 percent of their catch onshore; and,
- Vessels were to be crewed by at least 25 percent Canadians in an attempt to 'Canadianize' the industry.

Many license holders found these requirements difficult to meet, particularly that 50 percent of the catch be processed at an onshore processing facility in Newfoundland and Labrador. They argued that Canada lacked the infrastructure and skilled labour to take advantage of the new fishery for shrimp and maximize its potential. This policy would be too expensive for the new fishery, despite the clear economic benefits that it would provide to coastal communities in Newfoundland and Labrador. The offshore fleet presented a convincing economic argument to DFO on this requirement and as a result the requirement for 50 percent of the catch to be processed onshore was subsequently waived. This policy change to adapt to alleged economic realities eliminated a key part of the equation of adjacency (onshore processing) to the benefit of the offshore fleet.

In later years there were further policy changes or compromises to benefit the economic circumstances of the fleet. For instance, the policy requiring licensees to own and operate their own vessels was later recognized as not being economically feasible for most holders and was

thus adjusted in 1981 to allow the pooling of quotas and the sharing of vessels. At the same time foreign vessels were permitted to be chartered until 1987, 8 years past the original deadline, and the 100 percent Canadian-ownership criteria extended until 1990, 11 years past the original deadline. Despite the significant foreign presence, all products by 1986 were labelled as a Canadian product (Tab 13).

Leniency in meeting these requirements was granted because the offshore sector argued that enforcement would have bankrupted most of the license holders. In fact it was not until 1987 that DFO attached any consequences to not abiding to its stated policies. That year DFO announced that no foreign owned or flagged vessels could be chartered for the northern shrimp fishery after May 1, 1990. Failure to meet the requirement would result in non-renewal of the license (Tab 13). While compliance was eventually achieved, it took much longer (15 years past the original deadlines) to achieve "Canadianization." It was argued that survival of the offshore companies who were granted the initial licenses in the northern shrimp fishery industry required adaptive approaches to policy to meet realities.

Part of DFO's laxness in enforcing its Canadianization policies related to the uncertainty surrounding the future profitability of the shrimp fishery during an ecological shift that is similar to the one that is now occurring in the North Atlantic. Foreign vessels were a cheaper alternative, as they limited the risk of investment. Thus foreign vessels were key in exploratory shrimp fisheries and in the general harvesting of offshore quotas. It was not until 1986 that the offshore started to devote more effort to the shrimp fishery as it became clearer that northern shrimp would develop into a profitable fishery. It was not until shrimp was deemed a profitable venture that the offshore bothered to seriously engage in building an offshore shrimp fleet. DFO was clearly flexible in the enforcement of its own Canadianization and adjacency policies to ensure the profitability of the offshore fleet.

The economic ramifications for a bankrupt inshore fleet in 2016 are much greater than the bankruptcy of the offshore fleet in the early 1980s. DFO needs to be flexible to in the application of policies to the inshore fleet to account for that fleet's economic vulnerability. This approach not only adheres to past DFO actions with respect to policy, it also recognizes the specific economic concerns of the inshore fishery.

Adjacency and the Inshore Northern Shrimp Fishery In Newfoundland and Labrador

Over the past twenty years, the northern shrimp fishery has been woven into the social fabric of many coastal communities in the province whose vibrancy and survival depend on the industry. While the integration of the shrimp fishery into the economic heart of coastal communities took place on many level, there were legal frameworks and Canadian fisheries policy that "more directly anchored shrimp resources in actual regions and communities." (Tab 36) Many of these mechanisms were often financial and were pushed by the federal and provincial governments so that harvesters would continually invest in their enterprises with the purpose of building a better, stronger, and sustainable northern shrimp industry.

The possibility for inshore access to the northern shrimp industry came as a welcome announcement in 1996 to then-Minister of Fisheries and Aquaculture, John Efford, who lauded

> The northern shrimp resource in the past has been of little benefit to our inshore fishery, and I have made repeated presentations to Minister Mifflin and his department about the need to provide greater participation in this fishery by inshore vessels immediately adjacent to this resource. Mr. Mifflin's initiative means that for the first time ever, inshore fish harvesters may have access to this great resource. I commend Mr. Mifflin for his action, and the cooperation he has given the Government of Newfoundland and Labrador on this issue (Tab 37).

In 1997, the Minister also recognized the investment taken on by harvesters to participate in the northern shrimp fishery and the benefits that this participation had on coastal communities. The Minister noted:

> Considering that this new fishery didn't get under way until three months ago and the fact that most fishermen had to gear up – at considerable expense – for a species they had not fished before, this is extremely encouraging, not just for this year but for the potential benefits for 1998 and beyond (Tab 18).

As pointed out by the then-Minister Efford, though the offshore had been harvesting northern shrimp for almost 20 years, the benefits to the inshore and adjacent communities had been very few.

The 1997 decision to grant access to the inshore fleet to the northern shrimp fishery came with the DFO condition requiring harvesters to have gear up their vessels and be operational by December 31, 1998. Meeting this criterion required significant investment as outlined in section one. In total, more than three hundred and thirty harvesters made the investment to gear up for the new industry. Permits were obtained and, subsequently, transfer of these 'temporary' permits was permitted by DFO, a move unprecedented in the issuance of 'temporary' permits.

Adjacency was further reinforced in 2003 when the new IFMP recognized substantial increases in inshore quota. In that one year, the inshore quota grew by over 15,000mt. This seemed an important commitment to adjacency and the inshore shrimp fishery. As then-Provincial Minister of Fisheries and Aquaculture Yvonne Jones pointed out

> I am pleased to see the management plan reflects the need for the inshore fishers to benefit from the resource with the federal government's decision to change its historical allocation of quota between inshore and offshore harvesters. We have lobbied the federal government on this issue and it is evident that the federal minister has accommodated the inshore fishers in this allocation. By supporting the inshore fishery with additional shrimp resources we are able to secure more onshore processing jobs now and in coming years, and also allow more harvesters to benefit from the shrimp fishery (Tab 38).

Ms. Jones makes a very important point in her release – access to the resource was not only supporting the inshore and increasing jobs in shrimp plants but it was also providing a blanket of hope and growth.

The value of this industry was clear, and in the following years the provincial government invested large amounts of money to help improve the inshore shrimp fishery – in projects such as new shrimp trawl designs, sustainable practices, researching shrimp shell potential, and significant funding for marketing research and improvements to shrimp plants. The provincial

government, like inshore harvesters and plant workers, felt their position in the industry was not in jeopardy; there is no indication that the federal government was warning harvesters or the provincial government about LIFO and how it contradicts adjacency.

In 2006, the federal-provincial Fishing Industry Renewal Initiative[8] outlined suggestions to better rationalize the fishing industry and move it forward. The recommendations of the Initiative focused on marketing, self-rationalization of the shrimp fleet, freeing up capital, and the need for larger vessels (see Question 1). The central points about the Industry Renewal Initiative are how that process contrasted with the insertion of LIFO into the shrimp IFMP and the clear contradictions of the Renewal Initiative with LIFO. The Fishing Industry Renewal Initiative was a comprehensive process with hundreds of people providing input. In contrast, LIFO was inserted into the IFMP without consultation or agreement from the representatives of NSAC or other stakeholders. LIFO also directly contradicted the recommendation of the Initiative. As was noted in the response to question 1, it is difficult to believe that DFO was not aware of these contradictions at the time that the Initiative recommendations were made.

The most critical change to emerge from the Fishing Industry Renewal Initiative was the transferring of temporary inshore shrimp licenses to permanent. The concept of permanence should be enough to illustrate that inshore harvesters were now a constant part of the northern shrimp fishery and not the product of a temporary economic development program for coastal communities. The word "permanent" is defined by Webster's Dictionary as "*lasting or continuing for a very long time or forever (emphasis added)*." It is reasonable to assume that this change made harvesters feel their position in the industry was now concrete and that it was now important to plan for the long term.

In 2008 there were further policy changes to encourage investment for adjacent harvesters. The Minister of Fisheries and Oceans approved the extension of what has been temporary system of 'buddy-up.' This policy was extended under the permanent licensing arrangement and allowed harvesters in the >40' fleet (including the inshore <65' fleet harvesting northern shrimp) to 'combine' licenses, meaning two quotas harvested from one vessel. Criteria were put in place to regulate this process. This policy, like combining, led to harvesters making significant investments in vessels and equipment to best prosecute the fishery.

The sense of security provided by turning temporary licenses into permanent was also felt by the provincial government. This is why the province was taken so off guard by the application of LIFO in 2010 that resulted in a massive cut to the inshore northern shrimp quota. Then-Minister of Fisheries and Aquaculture Clyde Jackman, released a statement criticizing the application of LIFO and the willingness of DFO to sacrifice adjacency to move forward with LIFO:

> Against the advice of our government, the federal Minister of Fisheries and Oceans has decided to apply a last-in first-out approach to quota allocation reductions. This approach provides a greater level of protection for the offshore sector rather than the inshore fleet. The impact of this approach is that one group in the province is losing access and the province's inshore harvesters will see their allocation reduced by 18,000

[8] This Initiative was a lengthy consultative process that began in 2006, including the Premier's Summit on the NL fishery in May 2006, numerous government-industry working group meetings throughout the summer of 2006, and a series of province-wide consultation meetings with stakeholders in the fall of 2006 (DFO 2008). The goal was an integrated "Ocean to Plate" policy framework and discuss ways to restructure the industry as a result of fluctuations caused by a dynamic market place and the changing resource conditions.

> tonnes. There are principles of quota distribution that are far more important to maintain than the last-in first-out approach. The principle of adjacency must be paramount…The inshore sector was made a permanent participant in the Northern shrimp fishery by the Federal Government in 2007 *and therefore should not be subjected to the last-in first-out approach (emphasis added)* (Tab 21).

As has been stated at other times in this submission, it is impossible to square adjacency with LIFO. The two are not interchangeable nor do they operate in concert with each other. They are direct contradictions and cannot coexist.

The tragic part of LIFO is that though DFO could manage a fishery to the benefit of both the inshore and offshore fleet, LIFO actually keeps DFO from achieving this goal.

Section 3: If LIFO were modified or abandoned what are the elements of an access and allocation regime for the northern shrimp fishery?

FFAW-Unifor submits that a new access and allocation regime should be guided by the statement the current Liberal government made to the FFAW in September 2015:

> The best possible decisions are reached for the future of the resource, and the maximum benefit for the people and coastal communities who rely on the resource.

With this statement as our guidepost, the following three principles should form the core of the new access and allocation regime for the northern shrimp fishery:

1. Conservation and Sustainable Harvest: in line with the language used in the 2007 northern shrimp integrated fishery management plan.
2. Respect and fulfil the obligations on fishery resources as defined in the Nunavut Land Claims Agreement, the Nunatsiavut Claims Agreement and the Nunavik Inuit Land Claims Agreement.
3. The access to and allocation of the northern shrimp fishery shall be guided by adjacency, meaning that those who live nearest the resource shall have priority access to the resource and be the primary beneficiaries of the harvesting of the resource.

Applying Adjacency to the Northern Shrimp Fishery

To fulfill the principle of adjacency, all the following conditions must be met:

- To have access the stakeholder must live adjacent to the area where the resource is to be harvested.
- Allocation in an area for harvesting purposes shall be based on the following priority:

    1. Inshore owner-operator fleet (if one exists)
    2. Community based special allocation or license holders
    3. Offshore fleet

Impact of Applying Adjacency

This will focus primarily on SFA 6, as that is the area of primary interest to FFAW-Unifor and its members. Inshore harvesters in this province have also had limited experience fishing further north.

- All of Shrimp Fishing Area 6 shall be harvested by the inshore fleet.

- All adjacent community-based license or special allocation holders shall maintain an annual quota, to be set by the Minister of Fisheries and Oceans, in SFA 6.

    - The quota in SFA 6 attached to the community-based license or special allocation holders shall be harvested by the inshore fleet in SFA 6. The inshore fleet shall pay a fee/royalty to harvest the quota held by these adjacent license holders.

- The offshore TAC threshold and specific concern for the viability of offshore sector shall no longer exist in SFA 6. This threshold and viability conditions are the root of LIFO, as that is what the LIFO policy has focused on protecting. The new access and allocation regime shall possess no quota guarantees – quotas are set by the Minister and harvests pursuant to the principles set forth above.

Managing an Adjacency-Based and Inshore Exclusive Fishery in Shrimp Fishing Area 6

There will need to be management changes to ensure that the new structure of the SFA 6 fishery can function. The primary difference will be two new quota holders that will want to maintain the value of their quota but will now be required to have their quotas landed by inshore harvesters.

There are three issues of particular note:

1. How is the fee/royalty set between the quota holders and the inshore fleet?
2. Where is the shrimp attached to each quota landed and processed?
3. How will these quotas impact how the inshore shrimp fishery?

It was mentioned during the public consultations that moving the SABRI quota and the SFA 6 portion of the Labrador Shrimp Company quota to the inshore would remove the leverage that both groups have in negotiating for royalties. Both groups would be forced to negotiate with the inshore fleet, which could offer take it or leave it terms knowing that the inshore was required to catch the product.

Fortunately, NL has one of the most progressive price negotiating systems for fish resource in Canada, which would fully alleviate this concern. In 2006, the province's *Fishing Industry Collective Bargaining Act* was amended to include a Standing Fish Price Setting Panel, which provides a fair forum for the setting of fish prices. Under the Panel process, when the parties to a fish price negotiation cannot reach agreement on a price, the parties refer the matter to the Panel for a decision. The Panel is provided with market reports and the parties can submit other evidence to be considered. The Panel can set prices in different ways, though the most common is through final offer selection (FOS) where the Panel selects one of the prices put to it.

A further advantage of having this system in place is that both quota holders are already engaged in negotiations with the inshore through their pre-existing plants. This will make the transition into this system much smoother, as the quota holders are already deemed parties under the *Fishing Industry Collective Bargaining Act.*

As was stated during the consultations, all shrimp harvested from the SABRI quota will be landed at the St. Anthony plant. In this way, SABRI and the plant workers will maintain the maximum financial value of its special allocation. Similarly, all shrimp harvested from the two LFUSC quotas in SFA 6 shall be landed to the Charlottetown plant to ensure the maximum benefit for the shrimp company and the plant workers.

The LFUSC quotas in SFA 6 shall be harvested exclusively by 2J harvesters. The LFUSC quotas are particularly important to Labrador and the benefits of harvesting that quota should be given to Labrador harvesters. With respect to the SABRI, we do not anticipate any restrictions on which fleet can harvest that quota.

To properly integrate these quotas into the inshore system, SABRI and its partners must not use access to the SABRI quota as an inducement for more harvesters to land at the St. Anthony plant. The competitive balance amongst processers in the inshore shrimp fishery must be upheld. The SABRI quota cannot be used as leverage within the onshore shrimp sector.

Historic Dependence and Attachment

It was noted on several occasions during the LIFO public consultations that a new northern shrimp allocation plan has to deal with the competing interests of the principles of adjacency and historic dependence. However, it is the position of FAW-Unifor that the current definition of historic dependence is flawed and does not reflect the reality of the fishery.

The current definition of historic dependence is set forth in the New Access Framework. This definition states:

> Priority of access should be granted to fishers who have historically participated in and relied upon a particular fishery, including those who developed the fishery. Depending on the nature and history of the fishery, the requisite period of dependence can vary from a few years to many decades. The historic dependence criterion is based on the premise that fishers who have historically fished a particular stock should enjoy privileged access to that resource, to ensure their continued economic stability and viability, as well as that of the coastal communities from which they come.

The New Access Framework suggests that this definition could be applied in the following manner:

> The historic dependence criterion is most compelling when applied to a particular species that has been fished over a significant period. When the reliance on a stock is relatively recent, or generally rather than to a particular species, other criteria such as adjacency may be more applicable.

There are several flaws in this definition that make its applicability to the northern shrimp fishery less tenable. The first sentence of the definition notes priority access is to be considered for those who historically participated in and relied upon a particularly fishery, including those who developed the fishery. This definition is relevant to pre-1977 when the rules around accessing the fishery were much less defined and enforced by DFO. The establishment and enforcement

of TACs and the regulation of who is accessing zones is the product of the post-200 mile limit DFO.

Therefore, from 1977 on, DFO had much more control over who was given the privilege of harvesting a particular species. In the modern fishery and pursuant to the current definition of historic dependence, DFO decides who will be able to claim historic dependence in the future. As was stated in section 2 of this submission, the northern shrimp fishery was originally opened up through an application-based system, whereby interested parties applied and DFO selected who would be permitted to fish. This selection process cannot determine who can benefit from historic dependence.

FFAW-Unifor submits that historic dependence in fisheries that developed from 1977 onwards should attach to a fleet the moment that fleet makes an application to access the fishery for a particular species. Between 1977 and 1979, inshore harvesters made several attempts to access the northern shrimp fishery and were denied. In a 1979 letter from past FFAW President Richard Cashin to then-Minister LeBlanc, Mr. Cashin requested:

> I would hereby like to request of you that an additional fourth license be granted for that [northern shrimp] stock and that this license be held by Newfoundland Fishermen's Union Producers' Co-operative Society, a co-operative which has been established by members of our Union and which is open to all fishermen in the province of Newfoundland (Tab 39).

In explaining why he was pursuing the shrimp fishery through the offshore, Mr. Cashin explained:

> Individual fishermen in our mind normally will not have the financial capabilities of acquiring and successfully managing these licenses at least in the initial stages. It is for this reason in part that we have established our co-operative and feel that the acquisition of at least one license for the provincial co-operative will get this organization off to a sound start.

Inshore harvesters were clearly trying gain access when the shrimp fishery began, and thus their historic dependence should attach at this time.

Denial of access by DFO should not determine who can or cannot claim historic dependence. The rejected attempts of those denied access to the fishery must be given equal consideration when establishing timelines of access. For example, in the the LIFO consultations Dwight Spence, a harvester from 4R, noted that he was denied access to northern shrimp in 1978 by DFO because it was considered an offshore fishery. That should be considered a point of attachment for the inshore fleet to historic dependence. Similarly, in 1991 a group of harvesters in 3L presented a proposal to fish northern shrimp in the area now known as SFA 7. A $385,000 grant was approved in partnership with CCFI and arrangements were made to purchase a vessel from Iceland that had the technological capabilities to harvest shrimp. While the grant was approved, access to the fishery was once again denied by DFO. These follow-up and rejected attempts should be considered as the inshore maintaining its claims of historic attachment. DFO policies should not serve as a dismissal of harvester intentions.

While the inshore fleet was denied access to the northern shrimp fishery in 1977, it did gain access through the proxy of the Labrador Fishermen's Union Shrimp Company Limited

(LFUSC). The LFUSC was established by a group of inshore harvesters in Labrador under the guidance of then-FFAW President Richard Cashin. Cashin organized and chaired a meeting in L'anse au Loup in November 1978 to discuss how applications for northern shrimp licenses could take place for harvesters represented by the FFAW from Cartwright to L'anse au Clair. This meeting was attended by small boat fish harvesters, town councils, regional development organizations and the general public, indicating clearly the interest in gaining access to this fishery. It was then that harvesters agreed to apply as a cooperative and the early form of the LFUSCL came to be.

Two offshore shrimp licenses were granted to the Company at the time to ensure the benefits from the fishery remained within coastal communities. Royalties and profits from the resource would be invested back into the communities, which would provide good jobs and security. The core mandate of the Company is towards community and regional development. The LFUSC licenses represent inshore access to the northern shrimp fishery, though the means of harvesting is different due to the particular circumstances of the northern shrimp fishery in 1977.

The second major flaw with the current definition of historic dependence is its focus on species and not areas. It is indisputable that fish harvesters in NL have a centuries old dependence on the fish resources in SFA 6. Fish harvesting from these areas has been the lifeblood of harvesters for centuries and plant workers for decades. These grounds are harvested currently for other commercial species such as snow crab, lump fish, herring, mackerel, capelin, and cod.

By adhering to the current definition of historic dependence, we are bound to repeat the history of exclusion, unfairness, and fleet favouritism that are being addressed in this current LIFO review. Marine environments change, as do the stocks of particular fisheries. Each fishery cannot be viewed separately as a race to see who harvests it first. That is not the reality of the fishery. Most fish harvesters fish the species that exist within a defined area. It does not matter what species is fished, what matters is that harvesters have historically depended upon the fish within a particular area for revenue and sustenance.

This point was made clear by former FFAW President Earle McCurdy in a letter to DFO on IPAC. On the definition proposed by IPAC on historic dependence, Mr. McCurdy asserted (Tab 40):

> The fundamental problem with the Panel's reasoning in this whole area is that they argue as if the access that was recently granted in fisheries such as Northern shrimp and Newfoundland snow crab was to new entrants in the fishery. This, of course, is not the case. Those granted access, in both cases, were long established fishing enterprises whose previous mainstay, groundfish, has been mismanaged into virtual oblivion.

The current definition of historic dependence unreasonably ignores this attachment to place, which often exacerbates future problems. Most harvesters are always going to fish within a particular area. Yet, this flawed definition in place with historic dependence, a harvester that traditionally accessed an area may be denied harvesting a species of abundance within that area. Species-specific harvesting priorities based primarily on historic dependence gives rise to concepts like LIFO.

Under the interpretation of historic dependence held by FFAW-Unifor, the principle works in conjunction, and not conflict, with the principle of adjacency. Our claim to adjacency is based not just on the fact that we are next to the resource, it is based on the fact that we have always

used the resource. Our position is not opportunistic; it is based on a longstanding connection with the adjacency waters that has guided our economic, social, and cultural existence in the province.

If we do not acknowledge that historic dependence must transcend a given species and reflect the historic use of fishing areas on a geographic scale, and if we do not recognize a practical definition of when historic dependence attaches, we are bound to find ourselves in more LIFO situations – arguing for the existence and survival of the very coastal communities that have been built on the resources they are now fighting to retain usage of.

Aboriginal Land Claims and an Adjacency-Based Inshore Exclusive Fishery in SFA 6

Indigenous land claim rights and traditional rights are complex and fluid. FFAW-Unifor is not an expert on these matters and will not be making any broad interpretations of indigenous resource rights in Northern Labrador and further north. It is our position that there currently does not exist any indigenous treaty access or judicially-defined traditional access to SFA 6. Certainly offshore license-holding indigenous cooperatives and community owned corporations do have quotas in SFA 6. But these quotas are harvested as part of ongoing commercial endeavours that do not forward any treaty or traditional rights in SFA 6 that are known to FFAW-Unifor.

Indigenous fishing rights are protected by the Canadian constitution and defined through a series of treaties and judicial decisions. Section 35(1) of the Charter of Rights and Freedoms entrenches treaty rights at the highest level by stating, “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.” At the Happy Valley-Goose Bay LIFO consultation, Mr. Todd Russell, the President of NunatuKavut, stated that section 35 is not an empty box into which rights are filled. Rather, section 35 is a full box within which all rights can be defined. FFAW-Unifor supports Mr. Russell’s perspective of section 35 of the Charter.

Indigenous fishing rights have been defined on various occasions by the Supreme Court of Canada. In general, Indigenous rights are derived from prior use and occupation of lands and waters or from treaties signed by Indigenous groups with Canada or earlier colonial powers. The resulting rules to emerge from the various Supreme Court of Canada judgements have established a complex system of Indigenous fishing rights based around the purpose of the fishery. As it currently stands, there are several forms of access that grant different levels of protection and priority.

The broadest Indigenous right to the fishery was defined in ***R. v. Sparrow*** **(1990)** (Tab 41), which ruled that Indigenous people held a constitutional right to a food, social and ceremonial fishery and that this fishery held priority over other fisheries. This constitutional right could only be infringed upon for conservation purposes, and then only if the Government provided justification for this infringement. To define the scope of this decision, the Court also ruled that this case related to a breach of a food fishing license and its ruling therefore did not apply to commercial fisheries.

In ***R. v. Marshall*** **(1999)** *(*Tab 42*)* Indigenous rights to fisheries were expanded to include the right to fish for a moderate livelihood or sustenance. Thus, Indigenous rights included a form of commercial fishery. The rights of a commercial fishery were not unlimited. Justice Binnie in

Marshall, wrote that the treaty rights in question "are limited to securing 'necessaries' (which I construe in the modern context, as equivalent to a moderate livelihood), and do not extend to an open-ended accumulation of wealth."

The *Marshall* ruling was further defined two months later with the release of the ***Marshall II*** (Tab 43) decision by the Supreme Court of Canada. According to the Court, the right to a commercial fishery was not protected at the same standard as the right to a fishery for food, social, and ceremonial purposes. The government could infringe on a commercial fishing treaty right not only for conservation purposes but also for the pursuit of regional and economic fairness, including those of non-Indigenous participants in the fishery.

R. v. Van der Peet **(1996)** (Tab 44) defined the difference between food fishing and commercial fishing. Pursuant to this decision, the Supreme Court of Canada ruled that selling fish commercially does not fall under existing Indigenous rights and is not protected by Section 35 rights. To claim it as a right, an Indigenous group must, according to the Supreme Court, prove that the commercial fishing in question is "integral to the distinctive culture of the aboriginal group claiming the right." The Court ruled that conservation is still top priority but government's "pursuit of economic and regional fairness, and the recognition of the historical reliance upon, and participation in, the fishery by non-aboriginal groups" can possibly justify infringing on the constitutional right to fish.

The *Van der Peet* decision produced the Van der Peet Test by which claims for an Indigenous right to commercial fisheries are weighed. The following criteria must be established:

1. Courts must take into account the perspective of Aboriginal peoples themselves;

2. Courts must identify precisely the nature of the claim being made in determining whether an Aboriginal claimant has demonstrated the existence of an Aboriginal right;

3. In order to be integral a practice, custom or tradition must be of central significance to the Aboriginal society in question;

4. The practices, customs and traditions which constitute Aboriginal rights are those which have continuity with the practices, customs and traditions that existed prior to contact;

5. Courts must approach the rules of evidence in light of the evidentiary difficulties inherent in adjudicating Aboriginal claims;

6. Claims to Aboriginal rights must be adjudicated on a specific rather than general basis;

7. For a practice, custom or tradition to constitute an Aboriginal right it must be of independent significance to the Aboriginal culture in which it exists;

8. The integral to a distinctive culture test requires that a practice, custom or tradition be distinctive; it does not require that that practice, custom or tradition be distinct;

9. The influence of European culture will only be relevant to the inquiry if it is demonstrated that the practice, custom or tradition is only integral because of that influence;

10. Courts must take into account both the relationship of Aboriginal peoples to the land and the distinctive societies and cultures of Aboriginal peoples.

There are other agreements on the harvesting of resources between Indigenous groups and government, but unlike treaties and land claims agreements, these do not have constitutional

protection. One type of agreement is a harvest agreement, which is a social contract between government, Aboriginals and non-Aboriginals while another are the communal license entered into under the Aboriginal Fisheries Strategy.

Land Claims in Effect in Canada to Date

As mentioned above, land claim agreements are enshrined in Section 35 of the *Charter.* Many of these agreements have specific sections addressing fisheries resources. In the context of the Northern Shrimp fishery, there are three Land Claim Agreements to take into full consideration:

Nunavut – 1993

The language in the Nunavut Land Claims Agreement (NLCA) qualifies that the Federal Government is to recognize the importance of the principles of adjacency and economic dependency on marine resources, and this is to be given special consideration when allocating commercial fisheries resources (Tab 45 - p. 136). Adjacency herein means adjacent to or within a reasonable geographic distance of the area in question.

Nunatsiavut – 2005

Section 13.12.7 of the Labrador Inuit Land Claims Agreement (LILCA) qualifies that any subsequent expansion of effort for Shrimp in waters adjacent to the Zone will provide the Nunatsiavut Government with access to 11 per cent of the quantity available to be harvested (Tab 46 - 2 p. 214).

Through the signing of the Agreement, the Torngat Joint Fisheries Board was established which has provided advice on turbot, northern shrimp in SFA 4/5 and the Eastern Assessment Zone, snow crab and salmon. The board has also provided comments and recommendations to Fisheries and Oceans Canada on the National Policy for Allocating Fish for Financing Purposes, and the Policy on the Development of New Commercial Fisheries.

The Labrador Inuit Land Claims Agreement contains language on traditional participation, adjacency, socio-economic needs and economic viability (Tab 45 - p. 211). Further elaboration is found in LILCA 13.12.1 on the Commercial Harvesting of stocks in the area be considered with attention to residency in the Labrador Inuit Settlement Areal Adjacency to the Zone, and individual historical attachment to the commercial fishery of that species or stock in the Labrador Inuit Settlement Area.

Nunavik – 2008

The Nunavik Inuit Land Claims Agreement (NILCA) lays out the manner in which access to commercial species available in the marine environment is granted. For shrimp in the Southern Davis Strait Zone it is outlined that subsequent to the Agreement coming into “effect, 7% of any increase in the total allowable catch[…]established by the Minister for NAFO Division 0B will be allocated to one (1) or more MDOs to harvest in the Southern Davis Strait Zone. This amount will include any part of the increase provided to, or to be provided to, Makivik or any of its subsidiaries.” (Tab 47 - p. 41)

For the Northern Davis Strait Zone, the Agreement outlines that in any year after the document coming into effect 8.8% of any increase in the total allowable catch for shrimp in NAFO Division 0A be allocated to Nunavik interests. (Tab 47)

Adjacency is outlined in the context of the Hudson Bay Zone: “Government recognizes the importance of the principles of adjacency and economic dependence of communities in Nunavik on marine resources, and shall give special consideration to these factors when allocating commercial fishing licenses within the Hudson Bay Zone. Adjacency means adjacent to or within a reasonable geographic distance of the Hudson Bay Zone. The principles will be applied in such a way as to promote a fair distribution of licenses between the residents of Nunavik and the other residents of Canada and in a manner consistent with Canada’s interjurisdictional obligations.” (Tab 47 - p. 42)

Finally, the NILCA clearly indicates that if “the Minister decides to issue more commercial fishing licences to fish for shrimp in the area adjacent to the fishing area than the number available of issuance in the year of this Agreement, the Minister shall offer access to Nunavik Inuit through an additional commercial fishing licence issued to Nunavik Inuit or by some other means to 8.8% of the quantity available to be harvested under those licences.” (Tab 47 - p. 256)

FFAW-Unifor Proposal does not Infringe upon Existing Indigenous Rights and Land Claims Agreements

The FFAW-Unifor proposal is focused primarily on the thousands of fish harvesters and plant workers that live adjacent to SFA 6. Our proposal is not seeking to change, limit, or revoke any established Indigenous right.

During the consultations, access to SFA 6 was not argued as a treaty or traditional right of indigenous people.

The argument put forward by both Indigenous and non-Indigenous groups for continued offshore access to area 6 was based around a business model built on a year-round fishery. This argument should be taken at face value. Is preserving a business model worth the economic destruction that LIFO will cause?

An Adjacency-Based Inshore Exclusive Fishery in SFA 6 and Federal Government Policies

Establishing SFA 6 as an inshore only shrimp fishing zone also corresponds with the current policies of the federal governing party. At its 2016 convention in Winnipeg, a priority resolution was passed by the on the adjacency principle (Tab 48). The resolution required that the Liberal Party of Canada establish a “Declaration of Adjacency,” which is to be defined as the “fundamental right of those living in Canada to have the benefit from those resources that are in adjacent proximity to their communities and regions.” The resolution further resolves that this be the defining principle for managing the allocation of resources in coastal areas and that current allocation practices be reviewed against the “Declaration of Adjacency.”

It is clear that the governing party of Canada is moving away from LIFO and is focused on maximizing the benefits for the fishery resources for coastal communities.

Benefitting coastal communities and residents who live in adjacent proximity to the resource is at the heart of the FFAW-Unifor’s proposal to the MAP. As has been demonstrated in precise detail, our proposal will maximize work in the NL, it will maximize wages and wealth in NL, and it

will allow for an orderly economic and effort transition to the new groundfish fishery. No offshore stakeholder can make that claim with the detail provided by the FFAW.

A Decision Based on the Best Available and Factual Information

In its Terms of Reference, the words “factual” or “fact” are stated four times in a relatively short document. In the perspective of FFAW-Unifor, a “fact”-based review would require proving our assertions, backing up our statements, and explaining where facts, figures, and revenues are derived and used.

On this point, we feel that we have fully met the standard of a fact based review. We have not cherry-picked data or mis-quoted those who hold a contrary position. We have asked harvesters to disclose their most private economic information to prove that they bring value to rural NL that cannot be replaced. Harvesters do not want to discuss the revenue of their enterprises, but they did because the economic value of the shrimp fishery to coastal communities is essential to the MAP’s decision.

It is important to note that similar fact-based disclosures were not made by those advocating for LIFO. These stakeholders often provided general details of their operations, such as number of employees and total revenue, but none of this information was ever directly connected to the shrimp fishery in SFA 6. What would the loss of SFA 6 mean to an offshore license? How would this make that license unviable? What is viable for an offshore license? How many employees would be laid off? Why would they need to be laid off? What are the profit margins for the sector? Are these reasonable? There are many more questions to ask.

The offshore shrimp sector addresses some of these points but in a vague way. The most common offshore argument for maintaining access to 6 is that a year-round fishery is the offshore business model. That is a poor justification for LIFO.

We have remained committed to the facts. The MAP has heard evidence from people who will be unemployed and/or bankrupt if LIFO is maintained and the offshore is permitted to retain quotas in SFA 6. We have explained the impact of the shrimp fishery on communities and the communities have backed up our assertions.

A decision by the MAP in favour of the FFAW-Unifor proposal can be defended by the facts. That is the highest standard that exists.